

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 391

E. E. ASHCRAFT AND JOHN WARE, PETITIONERS,

vs.

STATE OF TENNESSEE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF TENNESSEE

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[fol. 1]

**IN THE CRIMINAL COURT OF SHELBY COUNTY,
TENNESSEE, DIVISION No. 1**

STATE OF TENNESSEE, Complainant

VS.

E. E. ASHCRAFT and JOHN WARE, Defendants

Bill of Exceptions—Filed January 13, 1943

TESTIMONY

GEORGE A. BECKER

Direct examination by General Gerber:

Q. State your name to the Court and Jury, please, sir?

A. George A. Becker.

Q. What business are you in at the present time?

A. I am special agent in the intelligence service of the United States Army, Corps of Engineers.

Q. Where are you stationed at this time?

A. My headquarters are Eldorado, Arkansas.

Q. I will ask you if you have come here in pursuance to a subpoena to testify in this case?

A. I have.

Q. Mr. Becker, how long have you been with the Intelligence Service of the United States Army?

A. Since the latter part of this year.

Q. And prior to that time, what was the character of your employment?

A. I was in charge of the Homicide and Identification Bureau of the Sheriff's office, Shelby County, Tennessee.

[fol. 2] Q. How long did you occupy that position?

A. About eight or nine years.

Q. How long were you with the Sheriff's office altogether?

A. About 16 years.

Q. As head of the homicide bureau of the sheriff's office, what were your duties?

A. I had charge of investigating all homicides that took place in Shelby County outside of the city limits of Memphis, or any other crime pertaining to the human body; shootings, woundings, and so forth; cutting scrapes.

Q. I will ask you whether, during that period of time, you investigated many or few homicide cases and cutting scrape?

A. Many.

Q. Or assault cases?

A. Many of them.

Q. Mr. Becker, I will ask you to state if, on June 5, 1941, you had occasion to go to the vicinity of Raleigh, here in Shelby County, to investigate a dead body that was found out there in a slough?

A. I did, yes, sir.

Q. Where did you get your first information with reference to that matter?

A. The information came to the Sheriff's office. I got it from Chief Deputy Sheriff Perry, who is now sheriff.

Q. You got it from Mr. Perry, sitting here?

A. Yes sir.

Q. After you received that information, where did you go?

A. I drove out the Raleigh Road to the first bridge—it would be the second bridge from Raleigh, across the Wolf River bridge.

Q. At that particular time did you find anything out there on the Raleigh Road near the first bridge?

A. Yes, sir, we found an automobile parked there on the [fol. 3] west side of the road.

Q. I will show you some photographs of an automobile that have already been introduced in evidence as exhibits 2, 3, and 4 and 5 to the testimony of Mr. Matteer and ask you to state to the jury whether this is the automobile found out there on that occasion?

A. Yes sir, they show the automobile.

Q. How long was it after the 5th of June, 1941 that these photographs were made?

A. I think they were made the next day if I'm not mistaken.

Q. At the time you drove up to where this car was, or in the proximity of this car, did you make any investigation of the car then?

A. No sir.

Q. Tell the jury what happened?

A. At the time we drove up, Deputy Sheriff Davis, who was riding the squad car at that time, waved us on down a

little dirt road that went off this road. He waved us down that road and there was an ambulance down there at the edge of the water. We drove to where the ambulance was and found the body of a woman lying on a stretcher. We made an examination of her body. She had on a red and white striped dress. Her nose was battered and there were six separate wounds on the top of her head. We examined the body at that time and there was no blood on any of her clothes; there was no blood in the wounds; I spread the wounds open and there was no blood. I turned the body over and there was no blood on the back. Collins Funeral Home ambulance was there and we had them take the body to their funeral parlor with instructions not to touch it until we got there.

Q. I want to show you a photograph that has been introduced as exhibit #14 to Mr. Matteer's testimony and ask you whether that photograph shows the road leading off the [fol. 4] Raleigh road that you went down to where the ambulance was parked?

A. Yes sir.

Q. You say you drove your car down there?

A. Yes sir.

Q. Is it possible to drive a car down that dirt road and come back out?

A. Yes sir.

Q. I believe you stated that when you got there the body was on a stretcher?

A. Yes sir.

Q. I want to show you a dress here and ask you if you ever saw that dress before?

A. Yes sir. That is the dress that was on the body of the woman out there that day. You will note that the dress buttons up in the front.

Q. I want you to state to the jury whether, at the time you saw this body on the stretcher, these buttons were buttoned or unbuttoned?

A. The dress was buttoned clear up to the top, all the way up to the last button and this (indicating pin) was right at the top button.

Q. Did you at that particular time observe any blood either on this dress or in the vicinity of where the body was laid out?

A. No, sir; there was no blood anywhere on the clothing. There was no blood in the immediate vicinity of where the body was and no blood in the wounds.

Q. And you spread the wounds out?

A. Yes sir.

Q. At that time did you notice anything in the hair?

A. Yes, sir, on the top of her head was a pair of eye glasses. The nose piece was hung in her hair and I took my knife and cut it out of the hair.

[fol. 5] Q. Mr. Becker, I want to show you some glasses that have been introduced as exhibit #16 Matteer and ask you to state to the jury whether these are the glasses you cut out of the hair of the body that you found in the slough at that time?

A. Yes, they are. There is still some hair on the nose-piece.

Q. At that time, after the body was sent to Collins Undertaking establishment, did you or not make an investigation in the immediate vicinity of the bank of this slough?

A. Yes sir, we did.

Q. Did you find any evidence at that time of any blood of any kind?

A. No, sir, we didn't.

Q. After the body was removed to Collins or left there in a Collins ambulance, what did you do?

A. We then went up to where the automobile was parked on the road and made an investigation of the car. In the front seat of the car we found a black purse, a driver's license made out to Zelma I. Ashcraft, 3520 Stanton Road. There was a towel and a black cloth—I believe it is called a turban. There were mud spots on the cloth. On the seat of the car there was a round box about so big (illustrating) that had been crushed and that box was marked "amytal". Also on the front seat was an oblong box marked "amytal" that had 12 tablets in the box, and in the front glove compartment there was a box that had three or four Empirin tablets. There was a box of Hinkle's pills, which is a purgative. In the back of the car there was a brown leather suit case, and in the right side of the car, in the back, on the floor, there was a blanket. Underneath that blanket when we picked it up there were three or four Camel cigaret stumps and there or four burnt matches. There was also a paper sack in the back of the car with a woman's hat in it.

Q. At the time you started to examine this car I will ask [fol. 6] you to state what the condition of the ignition was?

A. It was—the key was in the “on” position. The ignition was on.

Q. The key was turned on?

A. Yes sir.

Q. What was the condition of the clutch?

A. The car wasn't in gear and the brakes had not been set.

Q. Were the lights on the car burning?

A. No, sir.

Q. I want to show you a suit case here that has been introduced as exhibit #12 Matteer and ask you if that is the suit case that you found at that time?

A. That is.

Q. I want to show you a black hat that was introduced as exhibit #11 to Matteer's testimony. Is that the hat you found?

A. Yes sir.

Q. I show you a blanket that has been introduced as exhibit #12 to Mr. Matteer's testimony and ask you if that is the blanket you found at that time?

A. It is.

Q. What position was this blanket in when you found it?

A. It was just like that, (illustrating by rumpling blanket up) on the floor.

Q. It wasn't rolled?

A. No, sir. Not folded.

Q. It is in the position you have indicated to the jury?

A. Just like somebody had picked it up and thrown it in.

Q. You say you found a black pocket book there?

A. Yes sir.

Q. I want to show you a pocket book that has been introduced as exhibit 8 to Mr. Matteer's testimony and ask you if that is the pocket book you found?

A. Yes sir.

[fol. 7] Q. Was anything in that pocket book at that time?

A. No, the purse was open and nothing in it.

Q. On what side of the seat was the pocket book?

A. Right side.

Q. You testified that you found a little box that was crushed on the seat, marked “amytal”. I show you a little box and ask you if that is the box you found at that time?

A. It is.

Q. Was there anything in the box when you found it?

A. No, sir.

Q. Where was the box when you found it?

A. On the front seat.

General Gerber: I want to introduce this box as exhibit #1 to Mr. Becker's testimony.

(Exhibit #1 Becker received in evidence.)

Q. This has some writing, "amytal, 1½ grains" or something?

A. "Repeat one hour" or something like that.

General Gerber: I want to pass that to the jury.

(Jury examines exhibit #1 Becker.)

Q. Now you have testified that you found a box of amytal on the front seat?

A. Yes, sir, with 12 tablets.

Q. I show you a box and ask you if that is the box you found?

A. It is.

Q. Look and see how many tablets are in there now?

A. Seven.

Q. What became of the other five?

A. Four of the tablets I gave to Dr. Morrison to be analyzed and the other I took and dissolved in a glass of water to see what it tasted like.

Q. I want to show you this drivers license introduced as exhibit #6 to Matteer and ask you if you found it in the car at that time?

[fol. 8] A. I did.

Q. I show you a towel which is exhibit 9 to Matteer and ask you if that is the towel you found, or one like it?

A. Yes sir.

Q. Mr. Becker, I show you a box marked "tabloid Empirin compound" and ask you tell us if that's the box you found at that time?

A. It is.

General Gerber: I want to make that exhibit #2 to Mr. Becker's testimony.

The Court: All right. Have it marked.

(Exhibit #2 Becker received in evidence and examined by jury.)

Q. Is there anything in that box?

A. I think two tablets.

Q. Some tablets?

A. Yes sir.

Q. I believe you said you found a bottle with some kind of pills; is this the bottle?

A. Yes, sir, Hinkle's tablets.

General Gerber: Make that exhibit #3.

(Exhibit 3—Becker—received in evidence and passed to jury.)

Q. I show you a piece of cloth and ask you what that is?

A. That's the turban that was on the front seat of the car. At the time we found it, it was damp and had some spots on it, mud.

Q. That's been introduced as exhibit 7 Matteer. You say that in the back of the car under the blanket you found some cigaret stubs and match stubs?

A. Yes sir.

Q. Did you pick those up?

A. Yes sir.

Q. State whether they are contained in this envelope?

[fol. 9] A. They are.

Q. Look at these cigaret stubs and tell us what brand of cigarets they are?

A. Camels. There was one more cigaret stub with a spot on it and we put chemicals on it to see if it was blood.

Q. Was it blood?

A. No, sir, and the chemical destroyed the cigaret.

General Gerber: I want to have this envelope containing the cigaret butts and match stubs marked exhibit #4 to his testimony.

(Exhibit 4 Becker received in evidence and viewed by jury.)

Q. You say you examined the interior of that car. Did you find anything on the front seat other than these articles?

A. Yes, sir, we found a large muddy foot print on the left side of the front seat.

Q. There is an automobile seat lying there in front of the jury that has been introduced as exhibit #13 to the testimony of Mr. Matteer. I will ask you if that is the seat you saw there at that time and if it shows the foot prints?

A. Yes, sir.

Q. Will you state to the jury whether you applied any substance or any chemical for the purpose of preserving the print?

A. Yes, sir. We have a chemical which holds it intact when we spread it on and we spread it on that cushion.

Q. I will ask you whether that foot print as you see it now is substantially as you found it at that time?

A. Yes, sir, it is.

Q. Did you make a thorough investigation of the interior of that automobile?

A. Yes, sir, I did.

Q. Did you find any blood at all in that car?

[fol. 10] A. I did not.

Q. State to the jury whether you made a thorough investigation of the surroundings where the automobile was?

A. I did.

Q. Tell the jury if you found any blood anywhere outside of that automobile?

A. We did not.

Q. I will ask you if you had occasion to walk from that automobile down to the slough down that road that has been identified in these pictures and shown in exhibit 14 to Mr. Matteer's testimony, the road leading from the Raleigh Road to the slough?

A. I did, yes, sir.

Q. Did you find any blood anywhere along that road?

A. We did not.

Q. After you made this investigation at the scene where the body was found, I will ask you to state to the jury what you did then?

A. After we got through I took the keys out of the car and locked the car up and I had Deputy Davis call Weller Brothers to come out and haul the car in. After that was done, I walked to the slough of water and walked entirely around the slough for some distance back, examining the ground for signs of a struggle or blood, and found nothing.

Q. You saw no blood or indications of a struggle anywhere around where the car was found?

A. No, sir.

Q. I will ask you to state to the jury if, after this car was found, you made an attempt to get finger prints off the automobile?

Q. Yes, sir, I did. That car sat there practically all day and the road was a gravel road and of course finger prints were made but all we could get were smudges.

[fol. 11] Q. Could you find any legible finger prints at all?

A. No, sir.

Q. As head of the homicide bureau you have a finger print outfit and a photographic outfit here in this building?

A. Yes, sir, on the 5th floor of the county jail in the Homicide office.

Q. How long has that been your office?

A. As long as I have been in the homicide bureau.

Q. Is there anything else up there except the homicide office?

A. Yes, sir, on the opposite side of the building there is the Theft Squad Office; they investigate robberies.

Q. After you ordered this car pulled in and after you had investigated around the slough and found no blood and saw no signs of a struggle, where did you go then?

A. After that I told Mr. Matteer and Mr. Davis to drive to 3520 Stanton Road. As we turned off Chelsea onto Stanton Road we could see Matteer and Davis and another man. We got out and all went into the house at practically the same time and Mr. Matteer introduced myself and Mr. Key to Mr. Ashcraft.

Q. Will you indicate Mr. Ashcraft for the benefit of the jury?

A. That's him (indicating defendant Ashcraft). He introduced us to Mr. Ashcraft and Mr. Ashcraft sat down and I asked him what time his wife had left home that morning and he told me in the neighborhood of 3:00 o'clock and was going to visit her mother who lived in Adolphus, Ky. Before I could ask him anything else, he asked me had she been robbed and were her bank books on her. I told him I didn't know. He told us she had a chamois bag or pouch that she herself had made, containing \$200.00, and that it was pinned to her underclothes down under her dress, and that she had fifty dollars in her purse, and a diamond ring worth about \$90.00. I told him the purse was empty. Just as we went in the door, there was a Mr. Carlin

from the Collins funeral home who came in and asked to [fol. 12] speak to Mr. Ashcraft. I asked him could he wait until we got through. In the course of the conversation with Mr. Ashcraft, a gentleman living across the street by the name of Gambreal came in the house. I asked Mr. Ashcraft why his wife took such a lonely road at that time in the morning, and Mr. Gambreal spoke up and said that everybody in the neighborhood rode that way to the highway. I asked Mr. Ashcraft if he had any servants and he told that he had a negro woman by the name of Cora Taylor, and I asked him if Cora had worked that day and he said apparently so, the beds were made up. I asked him where Cora lived and he said he could point out the house to us, and we also asked him to go to the undertaking establishment and make a positive identification of the body and he told us he would be glad to go at any time. He was placed in the car with Matteer and Davis and we drove up Chelsea to Ash Street and turned to the right and Mr. Ashcraft indicated the house. We stopped the car and went to a house and asked if Cora Taylor lived there and they said yes, but she wasn't at home. We left word for her to report to the sheriff's office as soon as she returned. We then drove to the undertaking establishment, Collins Funeral Home on Poplar. Mr. Key and I got there before the others and we found the body lying on a slab covered with a sheet. When Mr. Ashcraft arrived, I pulled back the sheet and asked him if that was his wife and he stated it was, and he said something like "what a good girl she had been." I asked him where the money was that he had told us about and he said in her dress. In the presence of Mr. Ashcraft, the pin was unfastened and taken off and the dress was unbuttoned and an examination made of the underclothing and no pouch was found. There was no evidence that a pouch had been there—no pin holes or anything. After that Mr. Ashcraft was then sent to the County jail—

[fol. 13] Q. Right there, Mr. Becker, I want to ask you to tell the jury if, at any time while you were at Collins Undertaking establishment, the defendant Ashcraft walked around and made any observation of the wounds that appeared on the head of his wife at that time?

A. He did not.

Q. I will ask you if any time on that morning, either while you were on the way to Collins, while you were in the house or after you had gotten to Collins, or after leaving

Collins Funeral Home to go to the jail, whether Mr. Ashcraft asked you anything pertaining to how his wife was killed—what kind of instrument was used or when the body was found?

A. He did not.

Q. You say after that he was brought to the county jail?

A. Yes, sir.

Q. Go ahead.

A. After he was sent here I called you and explained the situation to you and you told me you would send someone up to assist me. I sent Key to get the photographic equipment and I took photographs of Mrs. Ashcraft's body and we undressed her and I brought her clothing up here and I came to the jail and when I got here Mr. Ashcraft was sitting with a man by the name of Smith in the back office, in the back of the building here. We brought him to our office on the 5th floor of the jail and were questioning him about the time his wife left home. We asked him to start at the beginning and tell us the time she left home. He told us that he had set the alarm clock for three in the morning and that his wife got up to go to Kentucky, and he stated that he got up and fixed her some coffee and grapefruit juice and carried her suit case and put in the car. About that time, we got information that Cora Taylor had called up and she was brought in the office on the 5th floor of this building and Mr. Ashcraft was asked to sit in [fol. 14] the corridor of the jail which he did, and after talking to Cora we had a negro man by the name of Plummer and a negro man by the name of Kimbrough brought in. We talked to Plummer and Cora and Kimbrough for possibly two hours and then started talking to Mr. Ashcraft again and started where we had left off and he said his wife didn't even sit down when she drank the coffee and grapefruit juice, but that she drank it standing up and that he carried the stuff and put it in the car—clothing and stuff—and we asked him if she made those trips frequently and he said she had been in the habit of making them often, driving by herself, and I believe he stated that she had made a recent trip to Helena, Arkansas; that they had sold a farm down there for \$1600.00 and she had made that trip. He told us that after he got her clothing in the car, that the car wouldn't run very well and that the top radiator hose leaked and that when the car would set over-night the

water would drip down on the spark plugs and that the car would miss, and that she sat there and waited until the water evaporated, and he said he didn't wait to see if she turned the corner, but went back and set the alarm clock for 4:30 and thought he would take a little rest before going to work, but that he didn't get to sleep, but got up and fixed his own breakfast and lunch and walked to the Hollywood car line which was a mile and a half from his house—that he walked there and got off and started to walk to his place where he was working, where they were building this pumping station, and on the way down his superintendent came along in a car and picked him up and drove him down there.

Q. I will ask you if at that time, while you were talking to him, he made any mention about his wife taking amytal?

A. Yes, sir, he told us that the night before that they had had sort of a party; that they had a niece, Miss Hightower, who was a nurse and she had been there at Mr. Ashcraft's [fol. 15] house with several of her friends and that they had supper and a few drinks and they had to be on duty at the hospital at about 10 o'clock and that he and his wife drove them to the hospital and on the way back they stopped at Hollywood and Jackson and filled the car up with gasoline and oil and when he got home he went to bed and that his wife was still awake. That the next morning when they got up she complained of a headache and stated that her head bothered her and took an amytal tablet and said if her head didn't get any better she would go buy a coke and take another amytal. He told us his wife had been in the habit of taking them for sometime. That he had seen her take as high as four and she would take them at night before going to bed. That he had gotten up in the mornings and didn't even wake her up, but would fix his breakfast and lunch and he would go to work and she would still be asleep; he stated that she had had an operation performed on her and that practically all of her female organs had been removed; that she was in a highly nervous state, and since January of 1941 both of them had had the flu. That since then she had become much worse and at times she would get screaming spells and he would have to go out of the house.

Q. How long did that conversation take with him that night?

A. Well, it was about 2:00 in the morning, Friday morning, when we left here to carry him home.

Q. Who took him home?

A. Mr. Key and myself drove him home. When we got there he stated that she may have left the rings at home, and with his help we searched the house for these articles but didn't find them, but in our search of his house we found a wrist watch in the dresser drawer in the bed room.

Q. Did you pay any particular attention to the wrist watch at that time?

[fol. 16] A. No, sir.

Q. You just saw a wrist watch in one of the drawers?

A. Yes, sir.

Q. I want to show you a wrist watch and ask you to tell us if this is the watch?

A. It is.

General Gerber: I want to make this exhibit #5 to his testimony.

(Exhibit #5—Becker received in evidence and examined by jury).

Q. At that time while going through the house, did you find blood anywhere?

A. No, sir.

Q. After you concluded there what did you do?

A. After we left Ashcraft's house we then drove to where the car was parked. The distance was one and 9/10 miles, that is, from his house to where the car was found on the Raleigh Road. It took us, at 30 miles an hour, four and one-half minutes to drive from Mr. Ashcraft's house to where the car was abandoned.

Q. After you made this drive out to the place where the car was found abandoned—I might ask you this now: I want to show this map to the jury. It merely shows the streets and directions. I show you this map of Chelsea Avenue going out to Stanton Road. This map is not drawn according to scale. I want you to indicate on that map approximately where the defendant Ashcraft lived on Stanton Road?

A. There (indicating).

Q. In order to go to the place where the car was found abandoned how did you go from Stanton?

A. You drive to Chelsea, then out Chelsea to the old Raleigh Road and the old Raleigh Road right in here.

Q. Will you make a round circle indicating where the slough was?

A. Right there (witness circles with pen).

[fol. 17] General Gerber: Make that exhibit #6.

(Exhibit 6—map—Becker, received in evidence.)

Q. I believe you stated that from the house you have indicated on Stanton Road, going out Chelsea to the Raleigh Road and out the Raleigh Road to where you have indicated the slough was, was 1 9/10 miles?

A. Yes sir.

Q. And it took you how long to drive it?

A. Four and a half minutes at 30 miles an hour.

Q. What is the condition of Raleigh Road, going through Raleigh and in that direction toward the main highway with reference to lighting facilities?

A. There were no lights along there. The only lights you would see after you got to Raleigh, I believe there were a couple of lights burning in the little town of Bartlett.

Q. The road was not well lighted?

A. That's right. There were no lights then.

Q. I will ask you if it is possible to go from Stanton Road across National Avenue, to Highway 70, which is the road that goes to Nashville and up to Kentucky?

A. Yes, sir, she could have driven out Highway 70.

Q. What is the condition of National Avenue from Chelsea Avenue, going toward highway 70, from the standpoint of lights?

A. I think from Stanton, Chelsea and Stanton up to the highway there are about twenty-two lights on these poles, with big globes.

Q. Are lights?

A. Yes sir.

Q. That's on National Avenue?

A. Yes, sir. And from National Avenue to the City limits over Graham Avenue, ten or twelve lights.

Q. I want to show you a photograph and ask you what that is?

[fol. 18] A. This picture shows Mr. Ashcraft's home and people by the name of Walker live just this side of him and the Gambreals live across the street.

Q. What is this street?

A. This is Stanton Road and this is Chelsea.

Q. Chelsea comes across this way? (indicating)

A. Yes, sir.

Q. Mr. Walker's house is the first one on the right here?

A. Yes sir.

Q. And across the road is Mr. Gambreal's?

A. Yes sir.

General Gerber: I want to make that exhibit #7.

(Exhibit #7 Becker received in evidence and examined by jury.)

Q. I hand you this photograph. What is it?

A. That's a picture of 3520 Stanton Road, Ashcraft's home.

Q. Does that show conditions substantially as they were at that time?

A. Yes sir.

General Gerber: Make that exhibit #8 (Exhibit 8 Becker received in evidence and viewed by jury).

Q. After you took Mr. Ashcraft home on that early Friday morning, I believe you stated it was two o'clock, and went out to where the abandoned car was found, I will ask you if you continued your investigation?

A. Yes, sir, we did.

Q. What did you do after that?

A. After leaving Ashcraft's home we went home and got a little rest. The next morning we came back up here about 8:00 o'clock but previous to leaving Mr. Ashcraft's house, I had asked him if he minded coming back to the office at 2:30 or 3:00 the next day, which would be Friday, and he told me he would be glad to come. We came back here the next morning and continued investigating the case, [fol. 19] and along about 3:00 o'clock Friday afternoon, Mr. Ashcraft came to the office and and Mr. Battle and I talked to him in our office on the 5th floor of this building, and he had no new ideas at that time about what might have happened, and he did however, tell us at that time that he had found his wife's wrist watch in the dresser drawer. He couldn't state how it got in the dresser drawer; he said she always kept it on the vacuum cleaner box. Then he left.

Q. At the time you were at his home about two o'clock early Friday morning and made a search of his house and found the wrist watch, was he there?

A. Yes, sir, he was there in the house.

Q. How long did you talk to him that Friday afternoon?

A. About thirty or forty minutes.

Q. Did he then leave the jail?

A. Yes, sir.

Q. And you continued your investigation?

A. Yes, sir and worked all that day and all that night.

Q. I will ask you if anything was done with the car?

A. The car had been carried to Weller Brothers. On Thursday night he had told us how bad the car was running and on that Friday we went to Weller Brothers and got the car and had no trouble at all starting it. It started and ran perfectly. We took the front seat out of the car and I sprayed that footprint and we tried to find finger prints but could only get smudges and I looked inside and outside for blood but couldn't find any.

Q. Where was the car then?

A. In the jail yard.

Q. Did you have occasion during the time it was here to [fol. 20] make an effort to start it and run it, and if so, did you experience any difficulty?

A. No, sir, we didn't experience any difficulty. We would start that car at all hours of the day and night and he had told us about water on the motor and we looked and there wasn't a drop.

Q. During that period I will ask you if you talked to many or few witnesses about this matter?

A. We drove all over this County day and night and got possibly three or four hours sleep each night. We talked to many people.

Q. After you saw Mr. Ashcraft on that Friday afternoon about 3:00 o'clock upstairs in your office, did you see him again after that?

A. Yes, sir, in the neighborhood of 9:00 or 10:00 o'clock.

Mr. Bickers: Just a moment. I want the jury out.

The Court: All right; take the jury out.

General Gerber: This is not the time.

Mr. Bickers: Just a moment then.

The Court: You don't want them out?

General Gerber: I'll tell him when.

A. About 9:00 or 10:00 Saturday morning Mr. Ashcraft came to the office in company with Mrs. Ashcraft's brother and Mr. Marcus Campbell.

Q. Is that the same gentleman who testified this morning?

A. Yes, sir. Mr. Ashcraft stated that his wife's brother wanted the body buried in Adolphus, Ky. I told him that as far as we were concerned it was all right, but I asked him not to leave town because we wanted to keep in touch with him. Mr. Campbell had some insurance policies that Mr. Ashcraft had given him and I got them from Mr. Campbell and made photostatic copies.

[fol. 21] Q. I will show you two photostatic copies of two insurance policies here and ask you to tell the jury whether these are the photostats of the insurance policies that you made pictures of on that Saturday morning when Mr. Campbell and the deceased's brother and Mr. Ashcraft came to the jail?

A. Yes, sir, they are.

Q. Where is the equipment with which you made these photographs?

A. On the 5th floor of this building.

General Gerber: I want to make these exhibits to his testimony.

The Court: Let them be marked.

(Exhibits #9 #10—Becker—received in evidence).

Q. This policy, I'll ask you to look at it and see whether that is policy No. V-5025068, name of insured, Zelma I. Ballentine. Age of insured, 26. Weekly premium, \$1.00. Amount of insurance \$1,000.00. Issued in addition to S-4706044. Beneficiary, Tennie Pearson. Is that right?

A. Yes sir.

Q. I will ask you if up in the left hand corner you can see the words "beneficiary changed—Eddie E. Ashcraft," and in parenthesis, "husband" and stamped February 12, 1943?

A. Yes, sir.

Q. Mr. Becker, I will show you another policy that has been introduced as exhibit #10 to your testimony, number S-4706044, Zelma I. Ballentine, age of insured 26; weekly premium under "cents", "25", payable at death \$465.00; beneficiary, Tennie Pearson.

A. Thats right.

Q. I will ask you if you notice in the upper left hand corner here, "Beneficiary changed—Eddie E. Ashcraft, husband" with stamp dated February 12, 1934?

A. Yes, sir.

[fol. 22] General Gerber: I want to pass these to the jury. (Exhibits 9 and 10—Becker—examined by jury).

Q. Mr. Becker, you say that on that Saturday morning you made a photograph of these insurance policies?

A. I did.

Q. And you returned the insurance policies to whom?

A. Mr. Campbell.

Q. I want to ask you this question, please, sir: I would like for you to tell the jury whether, in the course of your investigation you had occasion to walk from the Ashcraft home to the place where this car was found abandoned?

A. I did.

Q. What was your purpose in walking that route in the course of your examination?

A. I walked and looked on both sides of the highway to see if we could find signs of a struggle or any blood along the highway.

Q. State whether or not, on that walk you took from Mr. Ashcraft's home on Stanton Road to the place where you found this abandoned car, you found any signs of a struggle or blood of any kind?

A. I did not.

Q. State to the jury whether there were any houses or stores or residences or churches of any kind on that highway?

A. Yes, I believe on the west side of the highway there are possibly 25 or 26 residences; a barber shop; a block of brick stores and a wooden store, and a church, and I believe two or three filling stations; and on the east side I think there are 18 or 20 residences, a church and a tavern and I believe a filling station.

Q. From the location where this car was found, state if you can how far the nearest house is?

[fol. 23] A. The nearest house would be across the road and that would be about 300 feet.

Q. To whose house?

A. Mr. Crane.

Q. The house you speak of, is that on the east side of the road?

A. East side of Raleigh Road.

Q. How about the west side?

A. On the west side of the road, the nearest house would be south of the car, and that is possibly 450 feet.

Q. You say you saw Mr. Ashcraft again on that Saturday morning in company with Mr. Pearson and Mr. Campbell. How long did you talk to them at that time?

A. We had just a short conversation and I stated that I would rather he wouldn't leave town and I took the insurance policies and made photographs of them and returned them to Campbell and he left.

Q. Did you continue your investigation?

A. Yes, sir, day and night from then on.

Q. From that Saturday, when was the next time you saw Mr. Ashcraft?

A. The following Thursday.

Q. How did you happen to see him at that time?

A. We received information from Mr. Perry that Mr. Ashcraft wanted to see us. So Mr. Ezell and myself drove to the Ashcraft home and he was there at the house and he told us at that time that he had two dresses and he didn't know who they belonged to and he gave us those dresses. We talked to him and he told us he had made a mistake about the amytal; that she hadn't taken any amytal when she left but took it the night before. We asked him if he had any new ideas about who did it and [fol. 24] he said the only ones would be Cora Taylor and he mentioned a negro named Plummer as negroes that had been there at the house and we asked him about—rather, he told us that he had been married before. He stated that he had married a lady by the name of Saline Fayard and she was living in Bay St. Louis, Miss. and they were married at Biloxi, that he had married her in 1925 and they separated in 1927.

Q. Did he at that time make known to you where he had married the deceased, Zelma Ida Ashcraft?

A. He told us at that time—I believe it was at that time—in Biloxi, Miss.

Q. I am talking about Zelma Ida Ashcraft?

A. Oh, Zelma? He told us that the first night that we talked to me; he said he married Zelma in Pine Bluff, Arkansas.

Q. Had he at that time, or any time during the course of your investigation, made known to you that he had been married previous to the time he had married Zelma?

A. No, that was the first we knew about him being married before.

Q. Mr. Becker how long did you stay there at that time?

A. Maybe 40 or 45 minutes.

Q. Did you continue your investigation?

A. Yes, sir, working day and night, driving all over the County.

Q. Did you at any time thereafter talk to Mr. Ashcraft again?

A. Yes, sir, the following Saturday after that Thursday. We had investigated the thing from every angle in the world. There were things that we wanted Mr. Ashcraft to explain, so about 7:00 or 7:30 Saturday night, I believe that was the 14th, Mr. Key was sent to Ashcraft's home and he brought him into the jail.

[fol. 25] General Gerber: All right, Mr. Bickers.

Mr. Bickers: If your Honor please, I would like to have the jury retire.

The Court: All right, gentlemen.

(At this point the jury retired.)

Q. Mr. Becker, when the jury retired, I believe you had testified that on Saturday afternoon or Saturday evening you sent out and had Mr. Ashcraft brought to this building?

A. Yes, sir.

Q. What time did he reach here?

A. About 7:30 Saturday evening.

Q. At that particular time where was he taken?

A. Taken to our office on the 5th floor of the county jail.

Q. I believe you have already stated that you have been in that office eight or 10 years?

A. Yes, sir.

Q. What type office is it? Is it different from any other office?

A. No, sir. It has chairs and a typewriter and a desk. We have fingerprint equipment and photographic equipment and we have a dark room and ordinary lights. There is a light over the desk, hanging from the ceiling and electric fans.

Q. You say that Mr. Ashcraft was taken to that office. Tell what happened?

A. He was brought into the office and Mr. Battle and I started talking to him. We first talked to him just about personalities; where he was born and about his mother and father. He said he was born in Gillett, Arkansas, and his mother died in Dallas and that he inherited \$1000.00 from his mother. We talked to him about his first wife, Miss Saline Fayard. I believe he stated they were married in Biloxi, Miss. in 1925 and divorced in 1927 in Helena, Ark.; that at the time she left him they were in Memphis; he was working on a job here in Memphis and he stated to me that at the particular time when she left him they were having company for supper and he had had to work late, overtime, and when he came in she was mad and had her [fol. 26] stuff packed and left him and he got a divorce in 1927. He stated that he started going with Zelma Ida Ashcraft at Helena, Ark.; that he met her through a friend and that they were married I think he stated in August of 1928 at Pine Bluff, Arkansas; that he was working for the Hogan Construction Company and they transferred him from Helena to Pine Bluff and they were married in Pine Bluff. We then began talking to him about this money that she had on her. He stated that he and Zelma Ida Ashcraft had an agreement that was that any surplus money which was left over from the week before, that money would be equally divided among the two and they were saving that money and that the \$200.00 she had was her share and that they were saving it to buy a new automobile. We pointed out to him then the statement he had made about the amytal, first stating that she had taken amytal on that morning before she left and then changing his story and stating that she had taken it the night before. He had also made the statement that this car was in bad condition, that it would miss when they first started it, and we pointed out to him that every since we had been in possession of that automobile, it hadn't missed a lick. He had previously stated to us that his wife was a woman who wouldn't let anybody run over her or take advantage of her. We pointed out to him about this robbery; that there was nothing wrong with her clothing; that her clothing wasn't torn; that her dress was buttoned clear to the top. We pointed out to him that if the motive for her death had been robbery those wounds were not necessary; that she was a small woman and any man could have taken her money. We also pointed out to him that the car being

left in the position where it was, if the motive had been robbery, the chances were that the car would have been taken off; and the fact that the body had been thrown into [fol. 27] the water, well, we just couldn't figure that out; that if it had been robbery, if anybody had hit her in the head, they would have robbed her and gone on. We pointed out the fact that nothing was taken from the suit case in the car. We questioned him along those lines for some time and he finally made the admission that he knew everything pointed toward him.

Q. What time was it when that occurred?

A. In the neighborhood possible of 11:00 o'clock.

Q. What was the statement he made?

A. That he knew that all the circumstances pointed towards him and he had no explanation for them. So, after talking to him a little longer, I accused him of killing his wife and he stated that he didn't do it. We continued talking to him—Mr. Battle and I—along those same lines, trying to get some explanation of these things we had pointed out; and he could offer no explanation and talked to him until in the neighborhood of 3:00 o'clock in the morning. We had been working on this day and night and had had very little sleep and Mr. Battle and I came downstairs. Mr. Ezzell had come in the office and we came downstairs to try to get a little rest. About six or seven o'clock—

Q. I'll ask you this: What time did you leave Mr. Ashcraft that morning?

A. In the neighborhood of three o'clock, Sunday morning.

Q. After Mr. Ashcraft was brought in, and while you were talking to him that night, was any food offered Mr. Ashcraft?

A. It was along about midnight when we decided that we wanted something to eat, and we asked Mr. Ashcraft if he wanted anything to eat and he said no, but he would like to have some coffee. I went downstairs to the kitchen and got myself a sandwich and ordered him a pot of coffee and a bacon and egg sandwich. He didn't eat the sandwich [fol. 28] but he did drink the coffee. That was midnight Saturday night.

Q. And you stayed until about 3:00 o'clock. I will ask you if at any time from the time you started talking to him at about 7:00 or 7:30 that evening; until you left to

go downstairs, as you have detailed, whether anybody struck this man or abused him in any way?

A. No, sir, we didn't.

Q. I will ask you if at any time any promises of immunity or hope of reward were held out to him if he would make a statement?

A. No, sir.

Q. You left about 3:00 in the morning and came back when?

A. We came back in the neighborhood of six or seven Sunday morning. We continued questioning him along the same lines, asking him to explain these different things. He made the statement that he knew those things pointed towards him but he had no explanation to make. We continued talking to him until about noon Sunday. Then Mr. Battle and I left and I went home and came back along about 7:00 o'clock Sunday night and then continued questioning him along those same lines. Mr. Battle and I questioned him, and along about 11:00 o'clock Sunday night he asked for Mr. Ezzell. Mr. Battle and I left the room. Mr. Ezzell went in and was in there possibly thirty minutes when he sent for me. I went in and Mr. Ezzell told Ashcraft to repeat to me what he had just told Ezzell.

Mr. Ashcraft told me that a negro had killed his wife. I said, "if there is a negro in this thing, you must have hired him to do it." He said "no." I said, "Do you know who he is?" and he said "yes, a negro by the name of Tom Ware." I asked Mr. Ashcraft where he knew Ware and he said that Ware worked with him on this bowling alley job near Sears-Roebuck and had ridden in his car with him on several occasions. I asked him if he [fol. 29] knew where the negro lived and he said he did and he would have to take us and show us the house. He said that morning when he put this stuff in his wife's car and after she got in the car, that he saw this negro get in the back of the car and put his arm around his wife's neck and got her pocketbook and told her it was a hold-up. That the negro then climbed over the back of the front seat and got in the front seat and told her to back the car out of the drive, and said to Ashcraft: "You old, bald-headed son of a bitch, get back in the house and if you say anything about this, I'll come back and burn your house down." I said "Mr. Ashcraft, you had a telephone—why didn't you call the law and tell them what had hap-

pened?" He said: "That was a mean negro; I was afraid of him." I said: "You looked at the body of your dead wife who had been murdered by this negro and didn't tell us a word about this." He said "You don't need to worry about that; I intended to take care of him." Well, we put Mr. Ashcraft in the car with us. Jayroe was driving and I rode on the front seat with him. General Battle and Bob Ezzell rode in the back seat with Ashcraft.

We drove out Chelsea until we came to Sunset Street; we turned off of Sunset at Ashcraft's direction. We drove down Sunset a short ways and then he told us we were on the wrong street. We turned around and drove one block and turned to the right again, driving back towards Chelsea. When we got to this house, Ashcraft pointed it out and said "That's where Tom Ware lives." That was after we got on Oriole. The car was stopped and Mr. Jayroe and Mr. Ezzell and myself got out of the car and left General Battle and Mr. Ashcraft in the car. We went to this house and knocked on the door and a negro got up and opened the door—he was in his underclothes—and [fol. 30] we asked him if his name was Ware and he said no, it was George Pryor. We told General Battle to bring Mr. Ashcraft in and let him look at this negro and Ashcraft looked at this negro and said "that's not the negro."

Q. Were any lights on in the negro house?

A. We had our flashlights and they were thrown on this negro and Ashcraft said he wasn't the negro. The negro George Pryor said he didn't know Tom Ware, but his wife, who was in bed, spoke up and said there was a negro who lived next door by the name of John Ware. That would be the first house north of Pryor on the same side of the street. It was sort of an old store building and the front door was partially ajar and I went in. Up against the south wall of the building there was a bed and there were two negro men and a negro woman in bed.

Q. One negro woman and two men?

A. Yes, sir. The negro man closest to the door was awake. Mr. Ashcraft was brought in, and our flashlight was put on him and Mr. Ashcraft said that was not the negro. The negro in the middle of the bed had his head tucked under this negro woman's shoulder. We waked this other negro man up and Ashcraft looked at him and said "that's him." The negro was made to get up and dress. He said his name was John Ware and that they

sometimes called him Tom. The negro was made to put on his clothes and we brought him out and put in the car. Mr. Ezzell rode on the back seat with Ashcraft and the negro. Mr. Jayroe, myself and General Battle rode in the front seat of the car.

Q. I want to ask you this question: at the last trial there was some testimony by the defendant Ware that somebody struck him as you all took him out of the house. Did anyone strike him at any time?

A. No, sir.

[fol. 31] Q. Did General Battle or Mr. Ezzell or Mr. Jayroe strike this man at any time, in your presence?

A. No, sir.

Q. Go ahead.

A. They were brought back to the county jail.

The Court: What time was this?

A. That was in the neighborhood of 1:00 o'clock. They were brought back here and immediately taken to the 5th floor of the jail. Both Ashcraft and the negro were brought in the office. Mr. Battle and Mr. Ezzell, Jayroe and myself, were in the office at the time. The negro was asked "Do you know this man?" and he said "yes, sir; thats Mr. Johnny." He said "I used to work with him at this bowling alley job; I was a laborer out there." He was asked if he ever rode in the car with Mr. Ashcraft and he said he had. I asked him when was the last time he had ridden in the car with Mr. Ashcraft, and the negro studied for a while, and then Mr. Ashcraft spoke up and said: "Don't you know, Tom, that you were with me Thursday, June 5th?" The negro then turned to me and said: "Boss, you all wants the truth, don't you?" I said "yes" and he then turned and said, "Mr. Johnny, I told you when this thing happened that if anything come of it I wasn't going to take the whole blame on myself."

Ashcraft was then sent out of the room and the negro told us he had been working on the bowling alley job with Mr. Ashcraft and had ridden with him the first time because he didn't have any car fare and he had asked Mr. Ashcraft if he could ride and he said "Mr. Ashcraft told me he come that way every day and he could pick me up," and the negro stated that he had ridden with Ashcraft but just a few times when Ashcraft began to proposition him about killing this woman. He said Mr. Ashcraft stated

that the woman was living in the house with *with* him, and [fol. 32] I believe the negro stated that Ashcraft told him that his wife was in California and some other man had this woman there and that his wife was coming home from California and he had to get ride of her.

The negro said he didn't want to do it and Mr. Ashcraft kept after him, and that finally he left the job and went to work for some concrete pipe company on Chelsea and worked there several weeks; that one night, I believe on the Wednesday before this, that the negro was walking home from this concrete pipe place when Mr. Ashcraft drove up and picked him up and renewed this proposition and told him it would have to be done the next night told him it would look like a robbery; that on Thursday night, I believe in the neighborhood of 1:00 o'clock, he said that Ashcraft came to his house—he said his wife was in Mississippi—and Ashcraft got him and put him in his car and drove—

The Court: The negro's wife was in Mississippi?

A. Yes, sir; he was at home by himself and Mr. Ashcraft came and got him and put him in his car and drove out to the scene, and then drove back to Ashcraft's house and parked the car in the driveway, and the negro sat there on the running board of the car until Mr. Ashcraft and his wife came out.

He said that Mr. Ashcraft first brought out a blanket and a suit case and put them and a hat in the car and told him that in about 15 minutes the woman would be out. That about 15 minutes later both of them came out and got in the car. That he then grabbed Mrs. Ashcraft and she started to scream and Mr. Ashcraft told her to shut up, and said "There are two of them; do you want to get us both killed" and that he, the negro, got in the back of the car after he had made them get in the car; that he asked Mr. Ashcraft if he had any money and he said he didn't have any; that he asked the woman if she had any money, and she said she did, and gave him fifty dollars, [fol. 33] and Mr. Ashcraft said "give him what you've got;" and that the negro asked her would she drive and she said she would and they drove to the scene of the murder.

The negro stated that while he was waiting he had smoked several cigarets and put the stubs on the floor of the

car; that when they got to the place where this murder was supposed to be committed, Mr. Ashcraft reached and touched the negro on the leg; that that was the signal for the negro to order the car to be stopped; that the negro told her to stop the car and she stopped it and he made them both get out, and that he, the negro, told this woman he was going to drown her and drown her husband; that he went down to the slough and Mr. Ashcraft told him to get the woman's wrist watch; that he made the woman walk in front and he and Ashcraft walked behind; and then Ashcraft told him that was far enough; the negro then made her stop and got the watch and when they got to the pool of water he said he tried to push her in and he had to get Mr. Ashcraft to help him and when she hit the water she started to scream, and Mr. Ashcraft picked up a piece of rock and told the negro to hit her with it; he didn't want all that yelling. The negro said she was out in the water and he walked a few feet and hit her in the head with a rock. That she continued screaming and Mr. Ashcraft gave him another rock and he hit her another time, and they then went back to the car and Mr. Ashcraft told him to take her purse and dump it out on the ground because he wanted this to look like a robbery. He said he did that and then they both left there.

Q. I believe you said Mr. Ashcraft, somewhere in the neighborhood of 11:00 o'clock that Sunday night, sent for Mr. Ezzell and had a conversation with him for about 30 minutes and that then you were sent for?

A. Yes sir.

Q. And it was at that time Mr. Ashcraft told you about [fol. 34] the negro killing his wife?

A. Yes, sir.

Q. You say you then went out and got Ware. Did you go anywhere after you left Ware's house, or did you come straight to the jail?

A. Came straight to the jail.

Q. How long were you in your office before Ware made this statement to you?

A. We weren't there five minutes when he said, "Mr. Johnny, I told you when this thing happened that if anything ever come of it I wasn't going to take the whole blame myself."

Q. And after Ware made this statement to you, what did you do?

A. After he made this statement I called the sheriff and I think Mr. Battle called you, and Mr. Waldauer, who is a court reporter, was brought down and after he made his oral statement, he made a statement to Mr. Waldauer, which was taken down in shorthand.

Q. Were questions asked Ware and did he make answers to those questions at that time?

A. Yes, sir.

Q. Did Mr. Waldauer take it down in that fashion?

A. Yes, sir.

The Court: Was Mr. Ashcraft in the room at that time?

A. No, sir.

Q. Ashcraft wasn't in the room at that particular time?

A. No, sir.

Q. I will ask you whether, at any time, John Ware was advised that any statement he made would have to be made freely and voluntarily and could and would be used in court against him?

A. When he made the statement that Mr. Waldauer took down he was so advised.

Mr. McTighe: As I understand it, that advice was only [fol. 35] given to Ware when Waldauer began taking down the statement in shorthand and I object to anything that Ware said before that time which might tend to incriminate him, on the ground that his constitutional rights were violated because he wasn't advised of his constitutional rights before that, and I ask that the testimony of this witness with reference to any statement Ware made before being so advised be stricken.

Q. Mr. Becker—

The Court: Let's get this cleared up as to whether Mr. McTighe is correct in his statement.

General Gerber: All right.

Q. Mr. Becker, was Ware under arrest when you brought him in?

A. No, sir.

Q. Had you brought other witnesses in and examined them in the course of your investigation?

A. Many of them.

Q. At the time you brought Ware in, before you got him to the jail, did you know whether he was going to make a statement of any kind?

A. I did not.

Q. What was your purpose in confronting him with Ashcraft?

A. I wanted to know if Ware knew Ashcraft.

Q. And after that took place, Ware made that oral statement to you?

A. Yes, sir.

Q. Was that statement made for you like every other statement in the course of your investigation?

A. Yes sir.

Q. Then Mr. Waldauer—

Mr. McTighe: If this is not proper evidence, the Court won't consider it, of course, and that's the point I make.

[fol. 36] The Court: The court will bear that in mind in determining whether any of the evidence should be excluded.

Q. Mr. Waldauer came in and he is a court reporter in this County?

A. Yes, sir.

Q. Is he connected with the sheriff's office in any way?

A. No, sir.

Q. Does he hold an official position of any kind?

A. No, sir.

Q. At that time I will ask you if Mr. Waldauer took this statement down in shorthand?

A. He did.

Q. I am going to hand you a statement and ask you whether this is the statement that was taken down by Mr. Waldauer and reduced to typewriting on the typewriter?

A. (Examines statement) It is.

Q. About how long did it take Mr. Waldauer to reduce his shorthand notes to typewriting?

A. I imagine a couple of hours.

Q. During that time did anybody talk to Mr. Ashcraft or did you wait until this statement was written by Mr. Waldauer?

A. We had talked to Ashcraft from time to time up there, but after that statement was finished, we talked to him again. After that statement was completed, we got Ash-

craft and Ware together and I read that statement to Ashcraft.

Q. Was that done before or after the statement of Ware was reduced to writing?

A. After it was typewritten.

Q. After the statement was reduced to writing, was it read back to Ware?

A. Yes sir, by Mr. Battle. This was in the presence of myself, Mr. Battle, Sheriff Joyner, Dr. McQuiston and I [fol. 37] think Mr. Mr. Ezzell was there.

Q. At that time in the presence of Dr. McQuiston was it read back to him?

A. Yes, sir. He was handed a copy of the statement and he said he couldn't read and Mr. Battle read it back to him and everybody in the room had a copy of the statement. Dr. McQuiston had a copy.

Q. And after it was read back to Ware, was he asked to sign it?

A. Yes, sir, and he said he couldn't write. Then Mr. Waldauer, who is a notary, had him make his mark.

Q. Who handled that exclusively?

A. Mr. Waldauer.

Q. I will ask you if at that time any examination was made of the body of Ware by Dr. McQuiston?

A. Yes sir; he was told to take his clothes off and Dr. McQuiston examined him.

Q. I want to ask you if at any time, from the time that Ware was picked up out there on Oriole Street, brought down here to this building, taken up to your office and made the statements that you have detailed to the Court, whether anybody struck or abused him in any way?

A. No, sir.

Q. Did anybody threaten him in any way?

A. No, sir.

Q. Something was said at the last trial that the threat was made that if he didn't make a statement he would be turned over to a mob. Did anything like that occur?

A. No, sir. That's silly. I never heard of anything like that.

The Court: Would you have heard it if it had been said?

A. Yes, sir, for the reason that from the time Ware was brought into the jail until the time he signed the statement, he wasn't out of my sight.

[fol. 38] Q. Mr. Becker, I hand you this statement, and I want at this time, if the Court please, to mark it an exhibit to the testimony of this witness.

Mr. McTighe: I object to that.

The Court: Objection overruled.

Mr. McTighe: Note my exception.

(Exhibit #11—Becker—received in evidence.)

Q. After this statement was reduced to writing and Ware made his mark, what was done next?

A. During the taking of that statement, Mr. Ashcraft was sitting in the theft squad office. After the statement had been signed, there was Dr. McQuiston and Mr. Battle and Mr. Ezzell and myself and Sheriff Joyner. We went into the office where Mr. Ashcraft was and, in the presence of Dr. McQuiston, questions were asked him. We asked him if he had hired this negro to kill his wife and he said that he had; that he had offered him a hundred dollars to do it. I asked him why he did it and he said he wanted to get rid of his wife; that she was very nervous and that all hell couldn't get along with her; that as long as they had company she was all right but when she got him by himself, nobody could get along with her; he said that he had offered her \$1500.00 and the automobile and the house if she would divorce him and she had refused to do it.

Q. Was that statement made in the presence of Dr. McQuiston?

A. Yes, sir and Battle and Ezzell.

Q. Was Mr. Waldauer there at the time?

A. Yes, sir.

Q. I will ask you whether the defendant Ashcraft was abused or mistreated in any way at that particular time?

A. No, sir.

Q. After that occur-ed, I will ask you whether any written statement was taken from the defendant Ashcraft?

A. Yes, sir, there was.

[fol. 39] Q. I want to ask you this, Mr. Becker; you say that you talked to Mr. Ashcraft until about three o'clock Sunday morning, and about midnight Saturday night there was some food had; that a sandwich and coffee were brought up and that he drank some coffee?

A. Yes sir.

Q. Do you know whether he had any food that Sunday morning after you got there? You got there between six and seven?

A. When I got back between six and seven o'clock there was a tray there with the remains of a meal on it and a pot of coffee.

Q. Was there any food given Mr. Ashcraft after that?

A. We came back at noon and there was a tray and some remains of food.

Q. On that early Monday morning, just prior to the time that any written statement was taken from Mr. Ashcraft, I will ask you whether any food was given him?

A. Yes, sir, he was served breakfast at that time.

Q. Did he eat his breakfast?

A. Yes, sir.

Q. After he ate his breakfast, I will ask you whether a written statement was taken from him?

A. Yes, sir, there was.

Q. I will ask you whether at that time he was told that any statement that he made about this matter must be free and voluntary and that it could and would be used against him in Court?

A. He was.

Q. I want to show you a statement and ask you to look at it and tell the Court whether that is the statement taken from him at that time?

A. Yes, sir, this is it.

Q. Tell the court how this statement was taken and who [fol. 40] took it?

A. Mr. Waldauer took it in shorthand and later reduced it to writing.

Q. I want to ask you if, after this statement was reduced to writing by Mr. Waldauer, whether it was read back to Mr. Ashcraft and whether Mr. Ashcraft had a copy of this statement in his possession while it was being read back to him?

A. Yes, sir, I read it back and he had a copy.

Q. Who was present when it was read back to him?

A. Myself, Mr. Battle, Ezzell, Sheriff Joyner, Nelson Castle, Everett Pidgeon and Mr. Waldauer.

Q. What became of Dr. McQuiston?

A. After he examined Mr. Ashcraft, he left.

Q. Did he at that time examine the body of Ashcraft just as he had examined Ware?

A. Yes, sir; Mr. Ashcraft was asked to strip and Dr. McQuiston made an examination of him.

Q. After this statement was read back to Mr. Ashcraft I will ask you to state whether he was asked to sign it?

A. Yes, and he refused to sign it; he told me he wanted to talk to his lawyer first and I told him that would be all right.

Q. Did you ask him who his lawyer was?

A. Yes, sir; he said Mr. Smith was going to get him a lawyer.

General Gerber: I want to introduce this statement as Exhibit #12 to Mr. Becker's testimony.

(Exhibit #12—Becker—received in evidence.)

Q. Mr. Becker, at any time after this statement of Mr. Ashcraft was reduced to writing and read back to him, were any questions asked Mr. Ashcraft by Mr. Castle, in your presence?

A. Yes, sir.

Q. What did Mr. Castle ask him?

A. Mr. Castle asked him if what was in the statement was [fol. 41] true and he said yes; and he then asked him if there were any changes and Mr. Ashcraft said no, it was read back all right.

Q. After that occurred I will ask you if at any time the defendant Ashcraft and the defendant Ware were ever brought together.

A. Before Ashcraft made that written statement, and after the negro's statement had been taken, they were brought together?

Q. What occurred at that time?

A. The negro was brought in to where Ashcraft was and I read the negro's statement to Ashcraft and Ashcraft stated that he wasn't present at the time his wife was killed and the negro repeated that he had said if anything come it he wasn't going to take all the blame. Ashcraft said "Tom, don't you know that Mrs. Walker saw you when you drove away?" and the negro left the room. After the negro had gone I said to Ashcraft, "You know Mrs. Walker didn't see anything," and he said "yes, I was just trying to get him to change his story."

Q. I will ask you if, during the time you had Mr. Ashcraft here, from the time you brought him down, from

7:00 to 7:30 Saturday night until the time he told you about this negro killing his wife on Sunday night, whether he had an opportunity and did smoke all the cigarettes he wanted?

A. Yes, sir, he did.

Q. Was he denied the right to smoke cigarettes?

A. No, sir.

Q. I will ask you whether he was struck or abused or mistreated in any way?

A. He was not.

Q. I will ask you if at any time any promise of immunity or hope of reward were held out to him?

A. No, sir.

General Gerber: Take the witness.

[fol. 42] Cross-examination.

By Mr. Bickers:

Q. How long have you been in the sheriff's office?

A. About 16 years.

Q. You are familiar with the diagram of this building?

A. Yes, sir.

Q. You know how to come into the back door that leads into Mr. Armour's office?

A. That's the entrance to the county jail.

Q. And if you come in from the back door you just turn to the right and there is a door and that says "sheriff's office?" You know where the sheriff's office is?

A. Yes, sir.

Q. That's been there how long?

A. As long as this building has been here.

Q. Have you ever been in that office?

A. Yes, sir.

Q. About how big is it?

A. It's a pretty good-sized office. Maybe 20 or 25 feet long and 14 or 15 feet wide.

Q. How many magistrates were in Memphis the Saturday that you picked Mr. Ashcraft up?

A. As far as I personally know, there may not have been any, on that particular Saturday night.

Q. You know what I mean, Mr. Becker.

A. Well you asked me how many magistrates—

Q. I'll put it so you can understand it. Was there a duly elected officer termed a magistrate in the City of

Memphis on the Saturday that you sent out for Mr. Ashcraft?

A. I think there were seven, but whether any were in Memphis then I don't know.

Q. And you didn't try to find out?

A. No, I didn't.

Q. And you never made the slightest investigation to find out?

[fol. 43] A. No, I didn't.

Q. You were not concerned about a magistrate?

A. At that particular time I wasn't.

Q. All you were concerned about was getting Mr. Ashcraft on the 5th floor on that occasion?

A. The 5th floor is my office and has been for a long time.

Q. You sent out for him?

A. Yes, sir, sent Mr. Key.

Q. And you told the deputy to bring him to the 5th floor?

A. I told him to bring him to the jail.

Q. And you also told him to bring him to the 5th floor?

A. That's our office, Mr. Bickers. In investigating this case every witness I talked to was brought to the 5th floor. That's designated by the sheriff as our office.

Q. Are you ready to answer my question?

A. Yes, sir.

Q. Mr. Key knew, by reason of the previous examinations, that he was to bring Mr. Ashcraft to your office?

A. Yes, sir.

Q. That is, the 5th floor of this building?

A. Yes.

Q. And did you tell him Mr. Battle would be there?

A. Mr. Battle, Ezzell and myself had worked on this thing from the very start.

Q. That's not my question.

The Court: Mr. Bickers, I don't understand how it is material as to whether he knew Mr. Battle would be there. However, go ahead.

Mr. Bickers: I am going to place these different people in their different places, your Honor.

The Court: All right, go ahead.

Q. When Mr. Ashcraft was brought to your office, was [fol. 44] General Battle there?

A. Yes sir.

Q. Who else?

A. I think Mr. Battle and myself were the only ones at that time.

Q. Did you tell Mr. Key, when you sent out to get Mr. Ashcraft, that Mr. Battle would be there with you?

A. No, sir.

Q. He, as far as you know, didn't know that Mr. Battle would be there until he got there?

A. If you want to get a picture of the thing, Mr. Bickers—

Q. I just want you to answer my question.

The Court: Answer the question, then make any explanation you want to.

A. As far as I know, Mr. Key didn't know at that particular moment, that General Battle would be there; but from the time that this case broke, Mr. Key and Mr. Battle and Ezzell and I worked on this thing day and night.

Q. You have testified to that three times. It's your duty to try to solve crimes?

A. That's right.

Q. You testified that Mr. Ashcraft was brought in about 7:00 or 7:30?

A. That's as near as I can get to it.

Q. When he came into the office did you and Mr. Battle begin to interrogate him or did Mr. Key have anything to say to him?

A. Key didn't have anything to say. I sent Key to get another witness to talk to in this matter.

Q. Who was that witness?

A. Elizabeth Barnsfind I think her name is.

Q. Did you bring her up here that night and talk to her?

A. Yes, sir.

Q. Where?

A. On the 5th floor.

Q. Did she say she knew Mr. Ashcraft?

[fol. 45] General Gerber: Just a minute. We object to what she said as to whether she knew Mr. Ashcraft.

The Court: Objection sustained.

Q. Now when you and General Battle started to question Mr. Ashcraft, tell us what you first did and said to him?

A. When I first began to question him I asked him where he was born and his age and if his mother and father were living and if he had any children.

Q. Did you tell him what you had him for?

A. We told him we wanted to get this matter of the murder of his wife straightened out.

Q. Your testimony for the last 20 minutes has covered the space of time beginning at 7:30 Saturday night until 7:30 Monday morning. I want to know, if you can tell me, if you and General Battle discussed this matter and this matter alone with Mr. Ashcraft until 11:00 o'clock, at which time you became tired and left?

A. I will say we did. Some of the other officers may have been in and out of the office during that time.

General Gerber: Pardon me, I would like to interrupt. He did not say until 11:00 o'clock. He said until three o'clock Sunday morning. Not eleven o'clock.

Q. All right, from 7:30 until 3:00 o'clock Sunday morning, you and Mr. Battle interrogated or questioned Mr. Ashcraft; is that true?

A. Yes, sir, but not continuously of course.

Q. And you informed him that he had told you wrong about the mytal and about the automobile working right? Discrepancies?

A. That, and the condition of things as we found them.

Q. During that time you told him you believed he had killed her?

A. I did. I accused him of it.

Q. What time during the questioning you tell him that?

A. It was shortly after this admission he made that all things pointed to him.

[fol. 46] Q. How long had you been questioning him before he said that?

A. Possibly an hour.

Q. Was Mr. Battle there with you?

A. Yes, sir.

Q. Did he question him, too?

A. Both of us did.

Q. You mean you would question him for a while and then the other one would take him?

A. No, sir.

Q. Well, did both of you question him at the same time?

A. We couldn't talk to him at the same time. If some question came into my mind, I would ask him; and if Mr. Battle thought of something, he would ask Mr. Ashcraft.

Q. If you thought of something, you would ask him?

A. Yes sir.

Q. And if Battle thought of something, he would ask him?

A. Yes, sir.

Q. And you carried on that questioning about an hour?

A. When he said that all things pointed to him he thought. No, I'll correct that: I imagine it was about in the neighborhood of about 11:00 o'clock when he made that admission.

Q. You had questioned him from 7:30 until 11:00 o'clock—questions you thought about and that Mr. Battle thought about—all pertaining to this tragedy, and at about 11:00 o'clock he told you that everything pointed toward him?

A. Yes, sir.

Q. From 7:30 until 11:00 o'clock, at which time you say he told you that, did you, or General Battle, say "we have you up here for the purpose of being examined. I believe you killed your wife." Had you told him that, then?

A. Not until afterwards.

Q. What I want to know is, did either you or Mr. Battle tell him, between 7:30 and 11:00 o'clock, that you had him up there for the purpose of questioning him with regard [fol. 47] to the killing of his wife?

A. That was the reason he was brought up there.

Q. That's it. Now, before you questioned him, did you tell him that?

A. You see—

Q. Did you tell—

General Gerber: Let him finish his answer.

Q. Tell me.

A. Tell you what?

Q. How soon after you brought him there was it before you told him "any statement you make can and will be used against you in court and you are entitled to counsel right now." How soon did you tell him that?

A. We told him that when he made the written statement.

Q. Monday morning?

A. When he made the written statement.

Q. Did Mr. Battle have his Bible with him?

A. I didn't see any Bible.

Q. You know the record discloses that he testified he read the Bible to Mr. Ashcraft.

A. I still say I didn't see any Bible.

Q. You and General Battle would examine him for a time, and when you got tired, you went home and went to bed, and you don't know what Battle—

General Gerber: Let the witness tell us what happened. He said that he and Mr. Battle went downstairs.

The Court: Let's get this cleared up. You brought him up here at 7:30?

A. About that time.

The Court: That was on the Saturday evening?

A. Yes, sir.

The Court: And about 11:00 P. M. he made the statement to you that all circumstances pointed toward his guilt, and he had no explanation for it?

[fol. 48] A. That's right.

The Court: And in about an hour you accused him of murder?

A. Yes sir.

The Court: And about 3:00 A. M. you and Mr. Battle went downstairs?

A. Yes, sir.

The Court: All right.

Q. You just testified that you told him when he first got there that that was what you brought him up there for?

The Court: I don't so understand the testimony.

Q. I want to clear this up. I understood you to testify a few moments ago that when you brought Mr. Ashcraft up there and had talked to him for a while, you told him you had him there for the purpose of investigating his connection with this murder?

A. Not his connection with it. We tried to get all the information we could about the murder of his wife. We had told him that we were trying to work this out from the time that we first saw him.

Q. He made three trips?

A. He came down here the night the body was found that day. He came down Friday and Saturday. Three trips, yes, sir.

Q. And each time you told him that you wanted him to help you all he could to clear up this killing of his wife?

A. With the exception of Saturday.

Q. I'm coming to Saturday.

Q. The point is this: on three occasions you had advised him that you were investigating the murder and wanted to get all the information he had relative to his wife's death?

A. Yes sir.

Q. You were seeking from him any information or any clue or any idea as to who might have perpetrated the crime?

A. Yes, sir.

Q. You had been investigating about ten days?

A. Yes, sir.

[fol. 49] Q. When did you conclude to send Key out to bring Mr. Ashcraft in?

A. We didn't conclude that at any time. Frequently we pick up people like that. We don't always go to see them. It just happened to be convenient that night for Key to go get him.

Q. You apparently misunderstood my question. During your investigation, when did you conclude that it was best to examine Mr. Ashcraft on the 5th floor of this building with reference to the murder?

A. Every time we examined him it was on the 5th floor, but on this particular night there were some things that we wanted to have cleared up and decided to talk to him about them.

Q. You didn't see a bible?

A. No, sir.

Q. When you and Battle quit questioning him at 3:00 o'clock in the morning, who took over?

A. I left him; I don't know. Mr. Ezzell was on the 5th floor and I told him we were going downstairs.

Q. You told Ezzell to relieve you?

A. No, I told him we were going downstairs.

Q. When did you come back?

A. Six or 7 that morning.

Q. Who was with Ezzell?

A. He was by himself.

Q. Did Mr. Ezzell tell you he had been with Mr. Ashcraft all this time?

A. Talking with him.

Q. Did he say he had questioned him about the matter?

A. Yes, sir.

Q. You and Mr. Battle took over again at six Sunday morning?

A. Between six and seven.

Q. And how long did you continue to question him? When did you quit next?

[fol. 50] A. About noon Sunday.

Q. From six or seven that Sunday morning until noon, you discussed this tragedy with Mr. Ashcraft?

A. That's right.

Q. And you had told him seven or eight hours prior to that that you believed he had killed her?

A. I told him he killed her.

Q. That was 3:00 o'clock Sunday morning?

A. No, sir. That was about midnight Saturday night.

Q. That's what I had in mind.

The Court: He has testified to that, Mr. Bickers.

General Gerber: Three times.

Mr. Bickers: Well, I want to get it straight.

General Gerber: I want to make an objection this repetition.

The Court: Let's get along.

General Gerber: We'll be here from now on if—

Mr. Bickers: Well, you kept him there 36 hours.

The Court: All right, let's get along.

Q. Mr. Becker, from 7:30 Saturday night until 12 midnight or 12:30 Sunday morning, did you and Mr. Battle tell this man that he was entitled to counsel and that anything he said tending to incriminate him could and would be used against him?

A. No, sir.

Q. Did General Battle tell him that in your presence?

A. No, sir.

Q. He wasn't under arrest, was he?

A. No, sir.

Q. Now, on Sunday night you picked up Tom Ware?

A. Yes, sir.

Q. You got back here with him about one o'clock?

A. Yes, sir.

Q. Was the court reporter waiting for you?

[fol. 51] A. No, not at that time.

Q. You didn't know what anybody was going to say, did you?

A. Certainly not.

Q. When did you get the court reporter, Mr. Waldauer, here?

A. I imagine in the neighborhood of 2:00 o'clock. After Ware had made his statement, I called Sheriff Joyner.

Q. When Mr. Ashcraft dictated this alleged confession, what time was it Monday morning?

A. I would say 6:00 o'clock. I'm guessing at the time.

Q. Where was he when he dictated it?

A. In my office on the 5th floor.

Q. Had the shades been drawn up there?

A. There are no shades on the windows.

Q. Now where he was seated, have you got a drop light there?

A. We have a drop light over the desk.

Q. About what watt?

A. About 100 or 150. We also have a light in the ceiling on the south side of the room and there are some lights where we take pictures.

Q. After he dictated this so-called confession—by the way Dr. McQuiston had left?

A. He left after talking to Ashcraft and examining him.

Q. You then called Mr. Pidgeon and Mr. Castle? Who called them?

A. I don't know.

Q. When did they get there?

A. Just a short time before the statement was read to Ashcraft? Just guessing, I would say it was between 6:30 and 7:00 o'clock.

Q. What time was it when a warrant was sworn out for Ashcraft?

A. I imagine that was sworn out between 9:00 and 10:00 o'clock.

Q. Between 9:00 and 10:00 o'clock Monday morning?

A. Yes, sir.

Q. Do you know of your own knowledge whether a magistrate came to the jail and had the hearing at the jail? [fol. 52] A. I don't know.

Mr. Bickers: That's all your honor.

The Court: We will adjourn until tomorrow morning at 9:30.

(The witness left the stand).

Adjournment.

Morning Session—October 23, 1942

GEORGE A. BECKER resumed the stand and testified as follows:

Cross-examination.

By Mr. McTighe:

Q. Mr. Becker, I want to get the connecting link this morning. I believe you testified on yesterday that you brought Mr. Ashcraft up here Saturday evening around six or seven o'clock and questioned him Saturday night and you participated in the questioning of him during Sunday; that he was here and was questioned until sometime around midnight of Saturday night; that he was still held in jail and part of the time you questioned him and part of the time other- did, and of course what the others said to him when you were not here, you know nothing about that?

A. That's right.

Q. And during those times you left to get some rest because you were tired?

A. Yes sir.

Q. And during some of those intervals you slept at home?

A. I possibly did.

Q. You felt at that time that it was necessary for you to get some sleep because you were tired?

A. I was tired, yes, sir.

Q. Now, coming to Saturday night, when you get to my point of this case. Up to the point that you testified Ashcraft said something about Ware, up until that time there had never been any suspicion or any evidence whatsoever pointing to or indicating Ware in this lawsuit?

[fol. 53] A. Not up until that time.

Q. You never had even heard his name?

A. That's right.

Q. You had been investigating this matter for about ten days at that time?

A. Yes, sir.

Q. You had talked to some negroes out there in that section where Ware lived?

A. Yes, we had talked to some negroes.

Q. You talked to a negro man by the name of Plummer and one named Kimbrough?

A. Yes.

Q. Yesterday, you mentioned that that night you had some young lady up here. I never heard of her before. What was her name?

A. Leah Barnsfind, or Elizabeth.

Q. Was she up here in connection with this case?

A. Yes, sir.

Q. Where did she live?

A. I believe it was at the Elizabeth Club.

Q. How long was she kept here?

A. I don't know exactly.

Q. Were any charges preferred against her?

A. No, sir.

Q. Did she know Ware?

A. No, sir.

Q. Did she know Mr. Ashcraft?

A. She did.

Q. After Mr. Ashcraft made this oral statement to you, he told you that Ware lived on Chelsea?

A. He said he didn't know the name of the street but that he could take us there. He took us and showed us where he lived.

Q. You went down Sunset Street the first time?

A. Yes, turned off Chelsea onto Sunset; then went back [fol. 54] to Oriole where Ware lived.

Q. Sunset is a through Street running north from Chelsea?

A. I'm not sure where it turns off Chelsea.

Q. Oriole Street is practically a dead-end street?

A. Oriole Street was gravel for some distance; all of those streets run into Wolf River bottoms.

Q. Oriole Street is a gravel street up to about where Ware's house was, and from that point there is a dirt lane from there on through Mt. Olive?

A. Possibly so. It doesn't go through to Mt. Olive.

Q. When you get to Oriole, which is the next street south from Sunset, you turned north on Oriole?

A. No, we turned south and went back toward Chelsea.

Q. After you went up Sunset where did you go?

A. We turned north on Sunset.

Q. Where did you stop?

A. At the first house on the east side of Oriole—the first house north of Chelsea. That was Pryor's house and the woman in there pointed out where Ware lived, which was the first house north of Pryor's. Three negroes were asleep in Ware's house—lying down, rather—and we went in.

Q. Ware was lying there and when you told him who you were he made no attempt to escape?

A. None whatever.

Q. And you walked out in the front and put him in your car?

A. Yes, sir.

Q. Did you or any of your party tell Ware what you were taking him to the jail for?

A. I didn't and didn't hear any of the rest of them do so.

Q. After you got to the jail you confronted him—Ashcraft?

A. Yes, sir.

Q. After some conversation you separated them?

A. That's correct.

Q. And I believe you testified that after that you never [fol. 55] left Ware at all?

A. I didn't leave Ware until after he had made his written statement. I may have gone back and forth out of the room, but I was there with him all the time.

Q. You say you brought him in around 1:00 o'clock and you stayed with him until after the written statement was made and he touched the pen?

A. To the best of my recollection, yes, sir.

Q. And after that of course you left?

A. Yes, sir.

Q. What time did he touch the pen on that written statement?

A. I'm just guessing but I would say about 6:00 o'clock.

Q. Six in the morning?

A. Correct.

Q. At that time had the defendant Ashcraft read the statement and refused to sign the statement?

A. At that time he had not. It had not been reduced to writing—Ashcraft's statement—until after Ware touched the pen.

Q. After you got Ware in the jail about 1:00 o'clock, did you tell him what you had him up there for?

A. I never did tell Ware what he was up here for.

Q. Who did.

A. Nobody as far as I know. Like I told you yesterday, when he saw Ashcraft, we asked him if he knew him.

Q. But there were questions asked Ware when you brought him in?

A. There was never one question asked Ware until he had made the statement in the presence of Ashcraft.

Q. Ware of course wasn't represented by counsel at that time and none of his people were up there?

A. That's correct.

Q. What time did Waldauer get there?

A. Around 2:00 o'clock.

Q. Between the time that the conversation was had, which [fol. 56] you've related, between Ware and Mr. Ashcraft, and the time that Waldauer arrived, did you question Ware?

A. Oh, yes.

Q. And that was approximately an hour?

A. Yes.

Q. During that time did you tell him that he was charged with the murder of a white woman and advise him that any statement he made must be free and voluntary and could and would be used against him in court?

A. You mean between the time I brought him in and the time that Waldauer came in?

A. Yes.

Q. I did not.

Q. At the time he was first brought in did you make known to him that his statements must be freely and voluntarily made?

A. At that time I didn't know what he was going to say.

Q. The first time you ever made known to him that any statement made by him must be free and voluntary—when was that?

A. When we started taking a formal statement and Mr. Waldauer was taking it down in shorthand.

Q. Who gave him that information?

A. I did.

Q. And that was one hour after you brought him in?

A. Approximately that.

Q. In that hour you had been questioning him about various details of the thing, and it took some little time to get the statement from Ware?

A. Yes.

Q. About how long?

A. Well, it was about two or shortly after when Waldauer started and maybe an hour or a little better when he finished, because he had to transcribe his shorthand notes and it was in the neighborhood of six o'clock when he touched the pen.

[fol. 57] Q. I believe the statement is 12 pages long?

A. If it shows that, that's what it is.

General Gerber: Here it is.

Q. It could have taken Waldauer more than an hour to transcribe this statement?

A. Yes sir.

Q. There is one statement in this alleged confession—it is on page one: "Did you kill Mrs. Ashcraft?" The answer is, "me!"

A. That's right.

Q. Is that what he said?

A. That's the answer there.

Q. At that time, didn't you think the negro wasn't answering your question freely?

A. No, I thought he was answering it freely and voluntarily.

Q. Now, after Mr. Waldauer had taken this statement from Ware, Waldauer retired to write it up?

A. Yes, sir.

Q. Where was Ware then?

A. On the 5th floor.

Q. Wasn't he later taken to the 4th floor?

A. He may have been taken to the toilet.

Q. Did anybody ever tell Ware, before Waldauer got there, that he was entitled to a lawyer?

A. No, sir.

Q. How long did it take Waldauer to write both statements?

A. Perhaps two and a half or three hours.

Q. And during that time you never left Ware?

A. I may have gone downstairs to the wash room.

Q. Then I misunderstood you a while ago; I understood you to say you stayed with him the whole time?

A. That's correct. I was in and out.

Q. Now, about Dr. McQuiston, he wasn't Ware's family doctor?

A. Not as far as I know.

[fol. 58] Q. When did McQuiston get there?

A. I believe just before Mr. Waldauer got through transcribing Ware's statement.

Q. Was Dr. McQuiston present when Ware touched the pen?

A. Yes, sir.

Q. It has been your statement all along that Ware couldn't write?

A. That's right.

Q. And you learned at the last trial that he could write?

A. Yes, sir.

Q. If you had known he could write when he touched the pen, what would you have done?

A. That's something else, Mr. McTigue. He said he couldn't write. I don't know what I would have done.

The Court: Mr. McTigue, you are assuming a situation that didn't exist and asking this witness what he would have done if it had existed.

Q. You have taken a lot of statements?

A. Plenty of them.

Q. Did you ask anybody to witness that mark?

A. I did not.

Q. The only proof you have ever had in the course of your investigation against Ware is the statement given you by Mr. Ashcraft and the statement given by Ware?

General Gerber: We object to that.

The Court: Sustained. We are not trying the facts of this lawsuit.

Mr. McTigue: May I respectfully note my exception?

The Court: Yes, sir.

Mr. McTigue: That's all.

(Witness excused.)

(Short recess.)

[fol. 59] ROBERT EZZELL, the next witness, being duly sworn testified as follows:

Direct examination.

By General Gerber:

Q. You are Mr. Robert Ezzell?

A. Yes, sir.

Q. You are connected with the Attorney General's Office.

A. Yes, sir.

Q. What is your title?

A. Special Investigator.

Q. You have been so connected how long?

A. About two years.

Q. I will ask you if you participated in the investigation following the finding of a dead body in a slough near Raleigh, the body later turning out to be that of Mrs. Zelma Ida Ashcraft?

A. Yes, sir, I did.

Q. State whether you had occasion to talk to the defendant, E. E. Ashcraft, at any time he was brought to this building on Saturday afternoon about 7:00 or 7:30 P. M. I think that was the 14th or 15th of June?

A. It was the 14th. Yes, sir, I talked to him. I talked to him in the homicide office around 3:00 o'clock Sunday morning, June 15th.

Q. Were you here in this building from 7:00 o'clock on the 14th of June until the time you went in and talked to him?

A. Yes, sir; I was talking to different witnesses in the case.

Q. You say that about 3:00 o'clock Sunday morning you went in and talked to Mr. Ashcraft. Who had been talking to him?

A. Mr. Becker and Mr. Battle. I, too, had been talking to Mr. Ashcraft between six and seven o'clock about the discrepancies in the story he had told.

Q. I will ask you if, from the time you started talking to him, you at any time mistreated him or abused him in any way?

A. I did not.

Q. I will ask you if, between six and seven o'clock on that [fol. 60] morning, any breakfast was given to Mr. Ashcraft?

A. I asked him if he wanted any breakfast and he said he wanted some toast and coffee and some buttered toast and coffee were served to him. He ate the toast and drank the coffee. That was Sunday morning. I returned sometime Sunday afternoon between 12:00 and one.

Q. State whether or not you talked to Mr. Ashcraft then?

A. I talked with Mr. Ashcraft from that time Sunday afternoon until five o'clock that evening.

Q. During that time, from 1:00 o'clock Sunday afternoon, until five or six, I will ask you if you mistreated him?

A. I did not.

Q. Now, after five or six that evening, I will ask you if you had occasion to talk with Mr. Ashcraft again?

A. I went back in there between 11:00 and 12:00 when Mr. Ashcraft sent for me. Mr. Becker said he wanted to see me and I went in the room where he was. I was there with him alone and Ashcraft said he wanted to tell me the truth. I said "What is the truth, Mr. Ashcraft?" He said "Mr. Ezzell, a negro killed my wife." I said "What is the negro's name?" and he said "Tom Ware." I asked him how long he had known this negro and he said he knew him on the bowling alley job on Cleveland. I asked him if he knew where the negro lived and he said he didn't know exactly the house but he could take us and show us where he lived. I then said: "Mr. Ashcraft, you knew this all along; why didn't you tell the officers about it?" He said: "I was scared; the negro said he would burn my house down if I told the law." I then called in Mr. Becker and told Mr. Ashcraft to relate the story to Mr. Becker that he had told me, and he related the same story to him. After that Mr. Becker and General Battle and Mr. Jayroe and myself got in a car with Mr. Ashcraft and he took us to where this negro lived.

Q. The five of you went to where Ware was supposed [fol. 61] to live; and I will ask you if at that time you found Ware?

A. No, sir. He took us to a house on Oriole and Mr. Becker and I went to the front door and a negro man came to the door and said his name was George Pryor. We asked him if he knew a negro by the name of Tom Ware and woman spoke up and said a John Ware lived next door. We went next door and knocked on the door and a negro boy came to the door and we asked him who lived there and he told us John Ware. We brought Ashcraft in and

there was a negro in bed and Mr. Ashcraft said that was Tom Ware; he was in bed with his wife and another negro man. The negro boy in the middle said his name was Ware; he at that time had his head under the negro woman's shoulder. We got him out of bed and told him to put his clothes on. After he dressed, he was put in the car with Ashcraft.

Q. State whether or not Ware was on that occasion mistreated in any manner?

A. He was not. We put him in the back seat with Mr. Ashcraft on one side and Ware on the other. Mr. Battle and Jayroe and Becker were on the front seat and we came to the jail.

Q. From the time you picked Ware up and got in the car, until he was brought to the jail, was anything said to him?

A. No, sir.

Q. Was there any conversation between Ashcraft and Ware?

A. No, sir.

Q. Did they have an opportunity to talk to each other?

A. They could have if they had wanted to.

Q. Was anything said by Ashcraft or Ware in your presence on that trip to the jail?

A. No, sir. I was seated in the middle, between them.

Q. After you got to the jail with them, what happened?

A. After we got here, we carried them to the homicide office and Ware and Mr. Ashcraft were confronted with each other. Mr. Ashcraft was confronted with Ware and Ware was asked if he knew Mr. Ashcraft and he said "Yes, [fol. 62] that's Mr. Johnny Ashcraft." He said he had worked on the job with Mr. Ashcraft on Cleveland Avenue, the bowling alley job. He was asked if he had ever ridden with Mr. Ashcraft and he said he had, to and from work. He was asked the last time he rode with Mr. Ashcraft, and then Mr. Ashcraft said "Don't you know, Tom, it was last Thursday, June 5th?" Then the negro says "Yes, that's when it was." Then Ware said something about he was not going to take the rap alone and that he had told Mr. Johnny so.

Q. After that occurred, was any statement made by Ware?

A. At the time that occurred, General, I took Mr. Ashcraft out of the room and carried him to the theft squad office.

Q. Do you know whether Mr. Becker had talked with Ware then?

A. I don't know, sir; I wasn't there. I came back in there just when Ware was making his statement, but I wasn't there when the statement was started; when I came in Mr. Waldauer was taking it down in shorthand.

Q. During that procedure, did anybody mistreat or abuse Ware?

A. No, sir. After the statement was completed Mr. Waldauer went in the sheriff's office to transcribe it.

Q. After Mr. Waldauer had reduced the statement to writing I will ask you if anyone else came to the jail?

A. After Ware's statement had been transcribed, Mr. Battle read back the statement to him and Sheriff Joyner and Mr. Waldauer and Dr. McQuiston and I were in there. Mr. Battle read it to him and he was asked to sign it and said he couldn't write. All of us had copies of the statement and we followed the reading of it and after Ware said he couldn't write, Mr. Waldauer told him he could just put his mark there with a pen, by touching the pen, which Ware did.

Q. And after that happened, state whether or not Dr. McQuiston did anything with regard to Ware?

A. Yes, sir; the defendant Ware's clothes were removed and he was examined by Dr. McQuiston. After that Dr. McQuiston, myself, Mr. Battle, Sheriff Joyner went to the [fol. 63] theft squad office where Mr. Ashcraft was. Mr. Becker asked Mr. Ashcraft if it was true that he had hired the negro to kill his wife, and Mr. Ashcraft said that he gave the negro a hundred dollars to do away with her and I think Mr. Becker read him some of Ware's statement.

Q. What happened then?

A. Dr. McQuiston examined Ashcraft and he was served breakfast. That was around 7:00 o'clock. Mr. Becker asked Ashcraft certain questions along this line about how long he had been planning this murder and Mr. Ashcraft told him that his wife had gotten so that she was unbearable since she had the flu and it was impossible to get along with her. He said he had offered her the home, the car and half the money if she would divorce him, but she wouldn't do it, and he wanted her to go her way and live his.

Q. Did that occur in the presence of Dr. McQuiston?

A. Yes sir.

Q. What happened then?

A. Well, after that Mr. Ashcraft was given breakfast and he was then confronted with the negro. Mr. Ashcraft said to the negro, "Don't you know, Tom, that Mrs. Walker next door saw you leaving there that morning?" Ware said, "No, sir, I don't know that." Then Ware was taken out of the room and Mr. Becker said "As a matter of fact, Mrs. Walker didn't see him that morning?" and Mr. Ashcraft said "I know that; I was just trying to get him to change his statement."

Q. Who took down the statement?

A. Henry Waldauer.

Q. Were questions asked Mr. Ashcraft and did he make answers to them?

A. Yes, sir.

Q. Did anybody abuse or mistreat him?

A. No, sir.

Q. Were any promises of immunity or was any hope of reward held out to Ashcraft for making that statement?

[fol. 64] A. No, sir.

Q. What happened after the statement of Mr. Ashcraft was reduced to writing? Was it read back to him?

A. Yes, sir, it was.

Q. When it was read back to him, who was present?

A. Mr. Nelson Castle and Mr. Everett Pidgeon.

Q. Where was Dr. McQuiston?

A. He left, after examining Mr. Ashcraft and Ware. After the statement was typed, in the presence of Mr. Castle, Mr. Pidgeon, Sheriff Joyner, myself, Mr. Becker and General Battle, the statement was read back to Mr. Ashcraft. Mr. Ashcraft had a copy of it as it was read by Mr. Becker and the other men in the room had a copy. Mr. Becker read the statement back to Mr. Ashcraft and after he got through, Mr. Ashcraft was asked to sign it and he said he wouldn't like to sign it until he had seen his lawyer. Mr. Becker asked him if what he read was true and he said it was. Mr. Ashcraft said Mr. Smith was getting a lawyer for him.

General Gerber: Take the witness.

Cross-examination.

By Mr. Bickers:

Q. As I understand it, you participated in this investigation from the time this tragedy occurred until the completion of this statement, so-called statement, of Mr. Ashcraft?

A. I started on the case when General Gerber called me after the body had been found.

Q. You began right at the beginning?

A. Yes, sir.

Q. You advised with the other gentlemen who were in on the case?

A. Yes, sir.

Q. Now, during that time, from the beginning, on Thursday night, until 7:30 A. M. June 14th, had you found any evidence that indicated the complicity in this crime of the defendant Ashcraft?

[fol. 65] A. I had not until that time. There had of course been certain discrepancies in his stories, about the amytal tablets and about the chamois bag which he said was pinned to her slip.

Q. All the information you had was the thought that he had misled you about this amytal and about this chamois pouch?

A. That's what we wanted to talk to him about.

Q. Those were the only things that even tended to involve him—his lack of frankness?

A. At that time I didn't know that involved him.

Q. As I understand it, you took over about 3:00 o'clock Sunday morning?

A. Yes, sir.

Q. Who was with you at the time?

A. No one was with me; not when I first went in.

Q. Did someone join you later?

A. Mr. Key was in and out.

Q. Did you see Mr. Battle and Mr. Becker in there?

A. I saw them in there around 3:00 o'clock.

Q. You relieved them at three?

A. Yes, I went in and talked to him then.

Q. Why did you stay?

A. I wanted to talk to him.

Q. Mr. Ezzell, during the entire time you talked to Mr. Ashcraft up there, had he been asleep at any time?

A. Not while I was talking to him.

Q. Do you know whether he slept from 7:30 Saturday night until you took over?

A. I don't know.

Q. What were you talking to Mr. Ashcraft about?

A. About the discrepancies in his story and where he came from and how many times he had been married and about the amytal.

Q. You talked to him about his birth and previous marriage and his divorce?

A. That's right.

[fol. 66] Q. Did anything arise from the time you started talking to him at 3:00 o'clock Sunday morning until you quit at 6:00 o'clock and from 12:00 Sunday until 6:00 o'clock Sunday evening—did anything occur between you that you felt required you to advise him that he was entitled to counsel?

A. Mr. Bickers, Mr. Becker had charge of the investigation and I did not advise Mr. Ashcraft about that.

Q. Did you ever advise Mr. Ashcraft, from the time you first started questioning him, until 2:00 o'clock that Monday morning, that you believed he had killed his wife?

A. Yes, I told him Sunday afternoon that I thought he had.

Q. What did he say in response to that?

A. He said he didn't do it.

Q. And when was it you say he sent for you?

A. Between 11:00 and 12:00 o'clock.

Mr. Bickers: That's all.

Cross-examination.

By Mr. McTighe:

Q. Mr. Ezzell, you were present in the court room, I believe, when this trial started on Monday morning; you have been in the court room, sitting behind General Gerber, during the impaneling of the jury, along with Mr. Becker?

A. Yes sir.

Q. Becker was here, too?

A. Yes, he was in the court room.

Q. And during the impanelling of the jury, you discussed with General Gerber the selection of the jury?

General Gerber: If you- Honor please, I can't see the materiality of that in this hearing and we object to it.

Mr. McTighe: I want the record to show that Mr. Becker was in here during the impaneling of the jury; that he has been in the court room all that time; that he was permitted to be here during the impaneling of the jury, with this thought [fol. 67] in mind: that the Supreme Court of the United States has held that where a man testifies in court—

General Gerber: If the Court please—

The Court: Objection overruled. I will let him answer the question.

Q. I believe you discussed—

A. Discussed what?

The Court: Just a minute. To save time, let the record show that Mr. Ezzell and Mr. Becker were in the court room during the impaneling of the jury, and discussed the impaneling of the jury, and discussed the impaneling of the jury—that is, Mr. Ezzell did—with the attorney general.

General Gerber: We have no objection to that. We have nothing to hide about it.

Mr. McTighe: That's all we want.

Q. Mr. Ezzell, you went out after Ware the night he was arrested?

A. I was in the party that went out to get him.

Q. Did you have any evidence that he was involved in this crime?

A. Only what Ashcraft had told us.

Q. And that happened about 11:00 o'clock Sunday night?

A. Yes, sir.

Q. And you had investigated ten days intensely and closely and had questioned a number of negroes in the neighborhood where Ware lived—Kimbrough and Plummer?

A. I didn't talk to those particular negroes. We didn't know anything about Ware until Mr. Ashcraft told us about him.

Q. Other than this statement, which you tell us was given up there in the jail, no evidence of any kind was uncovered to show that Ware was involved in this tragedy?

The Court: Mr. McTighe, the only thing that concerns this court is whether or not these statements were made

freely and voluntarily and whether there was any promise of [fol. 68] immunity made or hope of reward held out. The question of the guilt or innocence of these defendants is not involved. So please confine your questions to this witness to that proposition alone. I think we have gone rather far afield and have wasted a lot of time.

Q. You arrested Ware and he was asleep?

A. He wasn't asleep at the time. He had his head tucked under his wife's arm. I couldn't say whether he was asleep. We flashed a flashlight on him and he was awake.

Q. He made no attempt to escape?

A. No, sir.

Q. Did anybody tell him who you were?

A. I didn't tell him.

Q. Didn't tell him what you wanted him for?

A. I didn't.

Q. When did Mr. Waldauer get here?

A. I imagine 3:00 or 3:30 or 4:00.

Q. When you first saw Waldauer, was he taking short-hand notes?

A. Yes sir.

Q. Mr. Becker was asking the question and Battle was there?

A. Yes, sir.

Q. When Waldauer went out to transcribe his notes, where did you go?

A. I was in there with Mr. Ashcraft.

Q. How long did it take Waldauer to write that statement of Ware's up?

A. I can't say.

Q. When was the next time you saw Waldauer?

A. Between six and seven the next morning.

Q. From the time this statement was taken by Mr. Waldauer, was Mr. Becker with him continuously until he signed the statement by touching the pen?

A. We were all around there and I don't recall who was with him at that time.

Mr. McTighe: That's all.

(Witness excused).

[fol. 69] ROBERT EZZELL (Rebuttal), having been sworn, testified as follows:

Direct Examination.

By General Gerber:

Q. Mr. Ezzell, you have previously testified in this case. I want to ask you if, at any time while you and Mr. Becker were talking to John Ware, Becker struck him in your presence?

A. He did not.

Q. Did you or Mr. Becker, or anybody in your presence, tell John Ware that unless he said he killed Mrs. Ashcraft, you would turn him over to a mob?

A. No, sir.

Q. Did anything like that occur when you had Ware in custody?

A. No, sir.

General Gerber: That's all.

Cross Examination.

By Mr. McTighe:

Q. Mr. Ezzell, did any of the officers raise their voice in talking to this negro?

A. Not in my presence.

Q. Did anybody call him a black so and so?

A. No, sir.

Q. Nobody cussed him?

A. Not in my presence.

Q. You do cuss sometimes, I guess?

A. Sometimes.

Q. And you were not in there all of the time that Ware was being questioned?

A. Not all of the time, no, sir.

Mr. McTighe: That's all.

(Witness excused.)

[fol. 70]

HENRY S. WALDAUER

The next witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gerber:

Q. State your name to the Court?

A. Henry Waldauer.

Q. What is your business?

A. I am a court reporter.

Q. You have been a court reporter how long?

A. 22 years.

Q. I will ask you if you were in this building on the early morning of June 16, 1941?

A. I was.

Q. How did you happen to be down here?

A. I received a call from General Gerber at 1:40 A. M. asking me to come down.

Q. Did you come to the jail?

A. I did.

Q. What time did you get here?

A. I arrived at the jail at 2:10 A. M.

Q. I will ask you if, at that time, you saw the defendant John Ware, alias Tom Ware, anywhere in this building?

A. I saw him at 2:15 A. M. on the 5th floor in the little room on the northwest corner.

Q. Mr. Waldauer, at that particular time did you take any statement from him?

A. Yes, sir, I did.

Q. I will ask you if questions were asked by anyone and answers made by anyone?

A. Yes sir; that is right.

Q. Do you remember who asked the questions?

A. Most of them were asked by Mr. George Becker; some were asked by General Battle.

[fol. 71] Q. I will ask you if, at any time in the taking of that statement, any of those officers made any answer to any of the questions asked Ware?

A. No, sir, they did not.

Q. You say Ware made all of the answers?

A. Every answer made in the transcript was made by Ware?

Q. You are certain that none of the answers were made by any other person for him?

A. I so testify.

Q. I hand you a statement here and ask you what it is—first how did you take the statement?

A. I took it down in shorthand and thereafter reduced my shorthand notes to typewriting.

Q. What is this paper that I hand you?

A. This is the typewritten statement that I wrote.

Q. Were all of the answers as reflected by that statement made by Ware?

A. Yes, sir.

Q. After that statement was reduced to writing, what happened?

A. It was read back to Ware.

Q. Do you remember who was present when it was read to him?

A. I have a memo and if I may refer to that—

Q. All right, sir.

A. (Examines paper) Mr. Becker—

Mr. Bickers: I object to that.

Mr. McTighe: The notes would be the best evidence.

General Gerber: We are going to introduce the notes.

The Court: Objection overruled at this time. He may refresh his recollection by this memorandum.

Mr. McTighe: Exception.

Q. Now, Mr. Waldauer, is that which you hold in your hand a transcript of what occurred while you were here?

A. Yes sir.

[fol. 72] Q. Now, tell us who was present when this statement was read back to Ware.

A. Assistant Attorney General Battle, Robert Ezzell, George A. Becker, Dr. J. A. McQuiston, Sheriff Joyner and myself.

Q. What time was it read back to him?

A. At 5:40 A. M.

Q. Mr. Waldauer was Ware asked if he could read and write?

A. Yes, sir. I'll find it in a minutes (refers to paper)

"Battle: Now this gentleman is a notary public, and we want you to sign the statement, and swear to it before him.

Ware: I don't know how to write. I can make my mark."

Battle: All right. He will write your name for you, and have you touch the pen."

Q. After that occurred, Mr. Waldauer, what happened with reference to the statement?

A. Ware then signed the statement before me as a notary public, but he signed it by making his mark.

Q. Did Dr. Quiston make an examination of Ware at that time?

A. Yes, sir, he did. He had Ware take off his clothes and examined him absolutely naked.

Q. Mr. Waldauer, I will ask you if, at any time while you were in the room, anybody struck the defendant Ware?

A. No, sir, no one did.

Q. Did anybody threaten him or curse him or abuse him in any way?

A. No, sir.

Q. After Ware made his mark to that statement, did you have occasion to see the defendant E. E. Ashcraft?

A. Yes, sir; I saw him on the same floor.

Q. In what room?

A. The southwest corner of the 5th floor.

Q. Did anybody go into that room to see Mr. Ashcraft?

[fol. 73] A. Yes, sir. At 6:15 A. M. the same morning, Mr. Battle and Mr. Ezzell and Mr. Becker, Dr. McQuiston, Sheriff Joyner and myself.

Q. What happened at that particular time, Mr. Waldauer?

A. When we went in that room, this happened:

"Mr. Ezzell: Has anybody mistreated you since you have been here?

Mr. Ashcraft: No, that is one thing I can say.

Ezzell: Since you have been here you have been treated all right, haven't you?

Ashcraft: Yes, I have been treated all right.

Ezzell: I want you to take off everything, so the Doctor can see you."

At that time, Ashcraft took off all his clothing and was examined by Dr. McQuiston. Then Becker said:

"Becker: How long have you been planning this thing?

Ashcraft: I don't know. It has been getting on my nerves for a long time, the way she has been carrying on, but ever since about May.

Becker: In May you planned to get rid of her?

Ashcraft: Yes, sir.

Becker: You planned to get rid of her for what reason?

Ashcraft: I could not get along with her. She was fussy, and I offered to give her the home and the car and half of the money if she would go ahead and let me go my way and her her way, because ever since she had the flue the woman has got to where you could not get along with her at all.

Ezzell: How about your sexual relations?

Ashcraft: Twice a month. She would always be sore.

Ezzell: You desired it more than that?

Ashcraft: I could have taken a whole lot more than that.

Becker: And you offered this negro how much money [fol. 74] to kill her?

Ashcraft: I told him I would give him \$100 to make away with her.

Becker: You told him you would give him \$100 to make away with her?

Ashcraft: Yes, sir.

Becker: And on Wednesday night, when he came to your house that was his purpose in coming there?

Ashcraft: That is the only thing I can figure.

Ezzell: That is the only thing you can figure. Didn't you go out and get him and bring him there?

Ashcraft: No, sir.

Ezzell: You did not do that?

Ashcraft: No sir.

Ezzell: But you told him what time she would leave there that morning didn't you?

Ashcraft: Yes, sir. I told him what time she would leave.

Ezzell: You knew he was in the car when you went out there with the luggage?

Ashcraft: He was standing at the side of the car."

Mr. McTighe: Your honor ruled a while ago that this witness could refresh his recollection from a memorandum, but it seems that he is reading the entire thing, and I object to it.

The Court: The Court understands that Mr. Waldauer as to conversation that took place in the room, and for that reason your objection is overruled.

Mr. McTighe: Note my exception.

Q. Mr. Waldauer, did the defendant Ashcraft see you at that time?

A. Yes, sir.

[fol. 75] Q. All right, then what happened?

A. Ashcraft was served breakfast, consisting of hot cakes, bacon and eggs and coffee.

Q. Did he eat it?

A. He did.

Q. After he had breakfast, did you take a statement from him?

A. Yes, sir.

Q. I hand you a paper writing and want you to look at it and tell us whether that paper writing reflects the questions asked and answers given by Mr. Ashcraft at that time?

A. It does.

Q. Who made the answers contained in that statement?

A. Mr. Ashcraft.

Q. I will ask you if, at any time during the taking of this statement, his eyes were bloodshot?

A. Not at all.

Q. What time did you start taking the statement from Ashcraft?

A. At 7:10 A. M. June 16, 1941.

Q. After you took that statement down in shorthand, did you transcribe it on the typewriter.

A. Yes, sir.

Q. How long did that take you?

A. Approximately an hour and fifty minutes.

Q. I will ask you if subsequently that statement was brought back to the 5th floor and whether anything took place in the presence of Mr. Ashcraft with reference to the reading of the statement?

A. Yes, sir. We had moved from the southwest corner of the room to the northwest corner. Mr. Ashcraft was in the room and so was Nelson Castle, Everett Pidgeon, George Becker, Mr. Battle, Bob Ezzell, Sheriff Joyner and myself. The statement was read to Mr. Ashcraft by Mr. Becker. Mr. Ashcraft had a carbon copy of the statement and followed the reading of it.

Q. I will ask you if anyone else had carbon copies of the [fol. 76] statement?

A. Everybody in the room either had a carbon copy or was looking at somebody else's.

Q. After the statement was read back to Ashcraft, what happened?

A. After it was read back, this happened:

"Ashcraft: I would rather my lawyer would look at it before I sign it.

Becker: That is all right, but what is in this statement and what you read is the truth?

Ashcraft: If I did not overlook any part of it, which I don't think I did.

Becker: I am not talking about what you did not put in that statement, but what is in the statement is the truth.

Ashcraft: Yes, sir.

Becker: Who is getting a lawyer for you?

Ashcraft: Mr. Smith.

Mr. Castle: What Mr. Becker read is the truth?

Ashcraft: Yes, sir.

Castle: And so far as you know, there is not correction to be made, is that right?

Ashcraft: No, sir; so far as I know.

Castle: Everything he read is the truth, and there is no correction to be made.

Ashcraft: No, sir.

Castle: There is nothing wrong?

Ashcraft: I did not hear or see nothing that is wrong.

Castle: Well, I followed him when he read it, and he read it all right.

Ashcraft: I would rather that my lawyer would read it over.

Sheriff Joyner: But the statement that he read, that [fol. 77] was true as read?

Mr. Castle: Yes, sir; I asked him that question.

Sheriff Joyner: And you followed it all the way through?

Mr. Castle: Yes, sir."

Q. All that took place in the presence of Ashcraft?

A. Yes, sir.

General Gerber: If your Honor please, I want to offer in evidence and have marked as an exhibit to Mr. Waldauer

the statement of John Ware, which is already in evidence as exhibit #11 to Mr. Becker's testimony.

The Court: That may be done.

(Exhibit #11 Becker also marked Exhibit #1 Waldauer.)

General Gerber: I want to offer in evidence the statement of E. E. Ashcraft, which is already in as exhibit #12 to Becker, as exhibit #2 to Waldauer.

The Court: That may be done.

(Exhibit #12 Becker also marked Exhibit #2 Waldauer.)

General Gerber: I want to offer in evidence as exhibit #3 to Mr. Waldauer the statement from which he refreshed his recollection.

Mr. McTighe: We object to that going in.

The Court: I don't think it's competent for this reason—

Mr. Bickers: I have no objection to it. In fact, I would like for it to go in.

Mr. McTighe: I'll withdraw my objection.

General Gerber: If there is not objection, we would like for it to go in.

The Court: Without objection from counsel, it may go in then.

(Exhibit #3 Waldauer received in evidence.)

General Gerber: You may take the witness.

Cross-examination.

By Mr. Bickers:

[fol. 78] Q. That memorandum that you offered as exhibit #3 to your testimony is true and correct, as you have sworn it is?

A. Yes, sir, it is.

Q. Everything that that memorandum reflects is true?

A. Yes sir.

Q. Did you make that memo from notes taken by you at the time, or from memory?

A. Mostly from my notes. I might explain this—

Q. I don't want any explanation, Mr. Waldauer—any long explanation, just because you want to talk. Did you make that thing from your recollection, or from your notes?

General Gerber: You can answer and then explain.

The Court: He may answer the question.

A. Part of this statement is reported verbatim and part is not.

Q. Are you now in position to tell the court which part is verbatim and which is from memory?

A. The questions and answers read are verbatim.

Q. Where did you get that memorandum?

A. I made it at the time.

Q. When did you first see Mr. Ashcraft?

A. At 6:15 A. M.

Q. You didn't see Mr. Ashcraft from the time you got to the jail on the 5th floor at 2:10 or whatever time it was, until 6:15 that morning?

A. I did not.

Q. And at 7:10 A. M. as reflected by your notes, you began to reduce whatever you had written in shorthand, transcribed it?

A. Yes, sir.

Q. And your testimony is that you started transcribing at 7:10 A. M.

A. That's right, started taking it.

Q. And you finished in an hour and 50 minutes afterwards?

[fol. 79] A. At 9:30 A. M.

Q. 9:30 A. M.?

A. Yes, sir.

Q. That's as truthful as anything else you have testified to in this case?

A. Everything I have said is the truth.

Q. This statement, you began transcribing at 7:10 and it required an hour and 50 minute- to complete it; is that right?

A. About that.

Q. And that statement is as true as any other statement you have made?

A. Whatever I have said was the truth.

The Court: He has answered your question, Mr. Bickers?

Mr. Bickers: He is just protesting his virtue.

A. Well, you are impugning mine.

Q. You are mighty sensitive. Did you see Squire Magoney here?

A. I did not.

Q. Where did you transcribe this statement?

A. They brought a typewriter to the 5th floor.

Q. And the next time you saw Ashcraft was 9:30?

A. That's right.

Q. An hour and 50 minutes after you went up there?

A. Yes sir.

Mr. Bickers: That's all.

General Gerber: In order that there may be no misunderstanding, Mr. Waldauer didn't say it was an hour and 50 minutes from the time he went up there. The statement introduced says that he started taking the statement at 7:10 A. M.; that it was completed at 7:40 A. M.; that it was transcribed and at 9:30 Mr. Waldauer went into the room where Mr. Ashcraft was. I want the record correct.

The Court: You may re-examine him.

Mr. Bickers: All right let's get an understanding. This witness has testified that *that* he started transcribing these [fol. 80] notes at 7:10 A. M. and it took him an hour and fifty minutes—

General Gerber: No, he didn't say that. You are wrong about that. He said 7:40.

A. Mr. Bickers, if I might make myself clear—

Mr. Bickers: I will ask you for an explanation if *it* want it.

The Court: You may clear it up on redirect if you want to.

Cross-examination.

By Mr. McTighe:

Q. Mr. Waldauer, you got to the jail at 2:10?

A. Right.

Q. Were you at home when the General called that night?

A. In bed, yes, sir.

Q. Did you look at the clock or estimate the time.

A. I looked at the clock.

Q. How long did it take you to take Ware's statement?

A. I don't have any memo on that, Mr. McTighe, but I would say 30 or 45 minutes.

Q. You didn't know Ware could read or write, did you?

A. No, sir. He said he couldn't.

The Court: I want to ask the witness a question. Mr. Waldauer, in the taking of Ware's statement, the paper which has been introduced, does this transcript report a complete account of what happened from the time Mr. Becker began to question him until he finished questioning him? In other words, were there any side remarks or promptings?

A. Your Honor, every word said in that room the time I started until the end is reflected in that transcript.

Q. And Mr. Becker was present during the entire time of the taking of that statement from Ware?

A. Yes, sir.

Mr. McTighe: That's all.

(Witness excused.)

[fol. 81] The Court: All right, you may present your motion.

Mr. Bickers: Now comes the defendant, E. E. Ashcraft, through his counsel of record, and moves the court to strike from the record, and instruct the jury to disregard, any conversations testified to by the witnesses Becker, Ezzell, Waldauer, and Battle. I believe that's all the witnesses. And any other witness' statements, as to statements made by the defendant Ashcraft after the 6th day of June, 1941.

Secondly, I move the court to strike from the record, and instruct the jury to disregard, the testimony of the above witnesses as to any statements made by the defendant Ashcraft after he was brought to this jail on the 14th day of June, 1941; and instruct the jury that they cannot be considered for any purpose.

The defendant Ashcraft further moves the court, on behalf of both defendants, that the alleged confession of Ashcraft and the alleged confession of Ware not be allowed to be read to the jury;

The defendant Ashcraft further moves the Court to exclude the alleged confession of Ashcraft for the reason that the statements contained therein were not freely and voluntarily made, nor were they free from duress and restraint, but were secured by compulsion and in violation of his constitutional rights given him under the Constitution of the United States and the State of Tennessee.

That's my motion.

Mr. McTighe: If your Honor please, in behalf of the defendant Ware, I join in all of the reasons heretofore stated by counsel for the defendant Ashcraft, and rely on them as specifically as if repeated right here.

For further motion I move the court to strike the confession, alleged confession of the defendant Ware on the ground that the record, at this stage, clearly indicates [fol. 82] that the confession of Ware was not made freely and voluntarily, without fear or promise of reward or hope of immunity; but, on the contrary, was made by compulsion and force.

I further move that any of the testimony of witnesses who testified relative to any statements made by Ware prior to the time he was advised of his constitutional rights, be excluded and likewise that they be withheld from the jury and not considered for any purpose.

The Court: All right. You may present your authorities.

(After argument and citing of authorities.)

STATEMENT OVERRULING MOTION TO EXCLUDE CONFESSIONS

The Court: The Court, as counsel for the defendant Ashcraft has stated at the outset of his argument, appreciates the gravity of this motion; and, knowing or anticipating that the motion would be made, the Court very carefully considered the authorities presented in this matter, assisted by counsel for the defendant Ashcraft.

The Court has come to the conclusion, after an investigation [fol. 83] of the authorities, that the law in Tennessee with reference to confession is simply this: it is largely a question of fact as to whether or not a confession is voluntary, and is made without hope of reward or fear of punishment. It only becomes a question of law for the Court to decide when, from the facts surrounding the taking of the alleged confessions or statements, the Court, as a matter of law, can hold that the State has failed to carry its burden, which it has of showing that the confessions were free and voluntarily, and that reasonable minds could not differ, and could come to but one conclusion that the confessions were involuntary and forced.

Now, as to the defendant Ashcraft in this case, the sole proposition, as the Court sees it from this testimony, is that he was confined and questioned for a period of approximately thirty-six hours. I think counsel concedes that is

practically the main ground upon which he rests his motion. There was no physical violence offered to the defendant Ashcraft, and none claimed.

In view of the testimony of the witnesses in this case, including Mr. Waldauer, including the various sheriff's officers who have testified, and of Mr. Ashcraft himself, this Court is not able to hold, as a matter of law, that reasonable minds might not differ on the question of whether or not that alleged confession was voluntarily obtained. And, therefore, as to the defendant Ashcraft, the motion will be overruled.

Now, as to the defendant Ware, the sole matters which he relies on, in the mind of the court, to urge upon the court that this confession was involuntary, and not obtained according to law, are these:

[fol. 84] First, his race and his obvious lack of education. He has made the statement—which is disputed—that he was struck and counsel urges upon the court the natural fear of the law in the minds of people of his race. The facts appear on the contrary from the testimony of the State's witnesses—the theory of the State and the testimony of the state's witnesses, that Ware may have had an entirely different motive for confessing; that he may have been influenced in making his confession by the fear in his mind that he might be left alone, without Mr. Ashcraft being in the lawsuit, and for that reason decided to make a clean breast in the matter.

The Court is not able, as a matter of law, to say that the reasonable minds of twelve men might not differ as to the question of whether Ware's confession was voluntary, and thinks, therefore, that is a question of fact for the jury to pass on.

The motion will be overruled and you gentlemen will be allowed proper exceptions."

Mr. Bickers: Note my exception.

Mr. McTighe: To which I respectfully except. Your Honor's ruling is as to both oral and written statements?

The Court: Yes, sir. Your motion is overruled on all grounds and you may note your exception.

Mr. McTighe: Note our exception.

Mr. Bickers: We respectfully except.

(Court thereupon adjourned.)

[fol. 85] GEORGE A. BECKER resumed the stand and testified as follows:

Direct examination (Continued).

By General Gerber:

Q. Mr. Becker, when the jury retired on Thursday afternoon, you were testifying about being out to the defendant Ashcraft's house on the Thursday following the finding of the body of his wife in the slough near Raleigh. I want to ask you if at that particular time, in the course of your conversation, whether anything was said at all by the defendant Ashcraft about cooperating in the investigation?

A. Yes, sir. He was asked if he had gone back to work yet, and he stated he had not; that he was staying around home where we could get him at any time we wanted him and he wanted to do everything he could to help out.

Q. Mr. Becker, at any time after that Thursday, I will ask you if you had occasion to talk to him again?

A. Yes, sir, on Saturday night, that was, late Saturday evening the 14th, I believe at about 7:00 or 7:30, Mr. Key was sent to Mr. Ashcraft's house and Ashcraft was asked to come to the 5th floor of the jail of this building in our office.

Q. At that particular time I want you to state to the jury what transpired between you and Mr. Ashcraft?

A. Well, we first started talking to him after he was brought up here and we asked him about his age—where he was born, about his parents, and he told us he was 44 years old and I believe he stated he was born in Gillette, Ark. Both of his parents were dead and his mother had died in Dallas and he had inherited about a thousand dollars from her, and we started talking about his former marriage and he told us that he had married a lady by the name of Saline [fol. 86] Fayard; I believe he said they were married in either Gulfport or Biloxi, Miss. in 1925, and that in 1927 he divorced her, got a divorce in Helena, Arkansas; that at the time they separated they were living here in Memphis and that he was on a job here and the reason they separated was that they had had a supper engagement that night and were going to have some friends at home and he was late getting home and when he did get home she was mad and left and in 1927 he got a divorce in Helena, Ark.

Mr. Bickers: I object to any testimony with reference to his former wife leaving him and getting mad at him. That has no bearing on this lawsuit.

The Court: Overruled.

Mr. Bickers: Exception.

A. He stated that in 1927 he met Zelma Ida Ashcraft at Helena, Ark.; he was working on a job there for Hogan Construction Co. and he stated that in 1928—if I am not mistaken—that he married her at Pine Bluff, Arkansas; that he was working for Hogan and they transferred him and he was shifted around from place to place but that he had been living in Memphis some time.

Q. All right, now, I'll ask you if at any time after he came to the building here and entered your office on the 5th floor on the evening of June 14th at about 7:30 P. M. whether he asked you not to talk to him.

A. No, sir, he didn't.

Q. I will ask you whether the answers he made to you were freely and voluntarily made?

A. Yes, sir.

Q. State to the jury whether you, or anybody in your presence, made him any offer of immunity or held out any hope of reward of any kind if he made a statement about this killing?

A. No, sir.

[fol. 87] Q. You were talking to him in that office along the same lines that you are detailing to the jury?

A. Yes, sir.

Q. Go right ahead?

A. We talked to him for sometime about things like that and then started to talk about the killing and went over it again and he stated that his wife had left home at 3:30 that morning and that he had set the alarm clock at 3:00 o'clock and he got up and fixed her some coffee and grape fruit juice and she drank it and he carried the blanket and suit case and hat and put them in the car for her, and when she left he went out and saw her off and he didn't wait until she turned the corner, but went back in the house and re-set the alarm clock for 4:30 A. M. and that he laid down but didn't go to sleep, but got up and fixed his lunch and breakfast and then walked from his home to the Hollywood car line, which is about a mile and a half, and got the Chelsea Avenue car and rode it as far as Bellevue; that

he was working on the pumping station at Wolf River at the time, and he got off the car and started to walk to where he was working when his boss came along and picked him up in his car and rode him the rest of the way. Then we pointed out to him that he had previously told us that the automobile would miss and that when he tried to start it in the morning it was hard to start on account of water getting from the radiator on the spark plugs. We told him that we had had that car for a period of several days and had started it at all hours of the night and day and had had no trouble at all starting it. Then we began to talk to him about his changing his story about the amytal. He had told us first that she had taken amytal that morning before she left and had intended to take one if her head didn't get [fol. 88] any better, and on Thursday he had told us that she had taken amytal the night before she left. We also pointed out to him that in a robbery case, if this had been a robbery, that there was no need for six separate and distinct wounds in her head; that that wasn't necessary and it wasn't necessary that the body be thrown in the water—there were no other marks or bruises about her body; that her clothing was not disarranged. We also pointed out to him that the automobile was still there at the same spot and if it had been a robbery, somebody would have taken the car; and we pointed out to him that there was no blood around the car, and after talking to him for some time, he admitted that everything pointed to him, but he had no explanation to make for it. All of us talked to him for sometime, possibly an hour or longer, and then I accused him of killing his wife.

Q. I want you to state to the jury just about what time it was, if you can, that he made this statement to you that everything pointed to him?

A. Well, as well as I can get at it, it was about 11:00 o'clock that night.

Q. How long after that was it, if you can tell us, approximately that you accused him of killing his wife?

A. Possibly midnight Saturday night, and he denied it. He said he didn't do it. We continued talking to him along those same lines and he couldn't give us any explanation, and along about 3:00 o'clock in the morning—

Q. Let me ask you here, during the time this questioning was going on, from about 7:30 P. M. until you say about

three o'clock in the morning, who was in the room with you and Mr. Ashcraft?

A. Mr. Battle and I.

Q. And you have identified him as the assistant attorney [fol. 89] general?

A. Yes, sir, of this County.

Q. You were the only two in there at that time?

A. I wouldn't say we were there by ourselves continually. The jailer probably came in and brought some sandwiches and coffee about midnight.

Q. I want to ask you whether or not during this time the defendant Ashcraft smoked cigarettes?

A. Yes, sir, incessantly.

Q. State just whether any denial was made to him to smoke cigarettes?

A. No, sir.

Q. I will ask you if any coffee or coffee or drink was offered him, or what did you do about that, if anything?

A. About midnight he was asked if he wanted anything to eat and he said no, but said he would like to have some coffee and I think I went downstairs and had the cook prepare coffee and sandwiches and he drank the coffee but didn't eat the sandwiches.

Q. You stayed with him until about 3:00 o'clock. What happened then?

A. We had been working on this thing day and night ever since it happened and I was worn out and Mr. Battle and I called Mr. Ezzell, who was on the 5th floor, and told him that we were going in the dormitory and try to get a little rest. We went downstairs and stayed until about six or seven o'clock Sunday morning. We came back up there Sunday morning and started talking to Ashcraft again, all on the same lines, trying to get him to explain the discrepancies in his story. He still stated that everything pointed to him but he had no explanation to make. We talked to him along the same lines until about Noon Sunday. By noon Sunday we left and I went home and stayed until about six or seven o'clock Sunday night. Mr. Battle and I came [fol. 90] back and talked to him then some more. We talked to him on the same lines until I say along about 11:00 o'clock Sunday night when Mr. Ashcraft asked for Mr. Ezzell. Mr. Battle and I left and Mr. Ezzell went in with him. In about 30 or 40 minutes Mr. Ezzell called me in and told Mr. Ashcraft to repeat to me what he had told

Ezzell, and Mr. Ashcraft told me that a negro had killed his wife.

Mr. McTighe: I think it is proper for your Honor to instruct the jury that any statement Mr. Ashcraft made, or that is alleged to have been made at that time cannot be considered against Ware for any purpose.

The Court: Yes, I think you are entitled to that. Gentlemen of the Jury, any statement made by Mr. Ashcraft that might tend to incriminate the other defendant, Ware, you cannot consider for any purpose.

A. He told me that a negro had killed his wife. I said "if a negro killed your wife, you probably hired him to do it." H- said "no". I asked him who the negro was and he said Tom Ware. I asked him if he knew this negro and he stated he did; that the negro had worked with him on the bowling all-y job and also stated that he had ridden the negro in his car on several occasions, and we asked him how it happened and he stated that when he put the stuff in his wife's car and she got in, the negro got in the back seat of the car and put his arm around his wife and took her pocket book and climbed over and got in the front seat and told her to back the car out of the drive and that the negro said to Mr. Ashcraft, "You old baldheaded son of a bitch, get back in the house and if you say anything about this, I'll come back and burn your house down". I asked him if he knew where the negro lived, and he said he didn't know the name of the street, but could take us out there. I [fol. 91] said, "Mr. Ashcraft, when that negro drove off, you had a telephone, why didn't you call the law and tell them that the negro had driven off with your wife?" and he said, "that was a mean negro; I was afraid of him." I said "When you looked at that dead body of your wife, why didn't you tell us then who killed your wife?" and he said "That's all right; I intended to take care of him." We then placed Mr. Ashcraft in a car; there was Mr. Ashcraft, Mr. Jayroe, Mr. Ezzell and Mr. Battle and myself in the car. We drove out Chelsea until we came to Sunset Street. Mr. Ashcraft directed us to turn left on Sunset Street. We turned and drove down and Mr. Ashcraft stated that was the wrong street. We drove down to Mt. Olive and turned right and drove to Oriole. We turned on that street to the right, going back in the direction of Chel-

sea. When we got to the first house north of Chelsea, Mr. Ashcraft pointed to a house and stated that was where Tom Ware lived. Jayroe, Ezzell and myself got out at the house and went up to the door. Mr. Battle and Mr. Ashcraft stayed in the car. We knocked on the door and a man opened the door and we went in the house and had our flashlights and we asked this negro what his name was and he said George Pryor and that he worked for some handle factory. We then called Mr. Battle to bring Mr. Ashcraft in the house. He came in and we put the flashlight on this negro and Mr. Ashcraft stated that wasn't the negro. We then asked this negro Pryor if he knew a negro by the name of Tom Ware and he said he did not. The negro's wife was in bed inside the room, and she spoke up and said "There is a John Ware that lives next door." We went there and this is a little store building and the front door of this building was partially ajar and we went in. Up against the south wall was a bed. In that bed were two negro men and one negro woman. The negro woman was on [fol. 92] the side of the bed farthest away from the door. The negro man nearest the door was awake and we had Ashcraft come in and the flashlights were put on this negro and Mr. Ashcraft stated that wasn't the negro. The other negro had his head tucked under this woman's shoulder. He was made to get out of bed and the flashlights put on him and Ashcraft said, "That's the negro". We made him get up and I asked him what his name was and he said it was John Ware, and "sometimes they calls me Tom." He was made to dress and was brought here to the jail. Coming back in the car, Mr. Ashcraft, the negro and Bob Ezzell rode in the back of the car. Mr. Jayroe, myself and Mr. Battle rode in the front.

Q. I will ask you if, at any time from the time Ware got up and was taken out to the car, whether anything at all was said by the officers to Ware?

A. No, sir.

Q. Was anything said to him from the time you got in the car until you got to the jail?

A. No, sir.

Q. I will ask you whether the defendant Ashcraft and the defendant Ware had any conversation of any kind coming back to the jail?

A. No, sir.

Q. Did anybody abuse either of these defendants at any time from that trip out to get Ware and the time you brought Ware back to the jail?

A. No, sir.

Q. Go ahead.

Q. They were brought to the jail and when we got to the jail they were immediately carried to my office on the 4th floor. We walked in the office. I asked Tom Ware "do you know this white man?" and he said "Yes sir, that's Mr. [fol. 93] Johnny Ashcraft". I asked him how he knew him, and he said "I used to work with him on the bowling alley job." I asked him when was the last time he was in the car with Mr. Ashcraft, and the negro hesitated and Mr. Ashcraft spoke up and said, "John, you know it was on Thursday the 5th," and the negro said, "Boss, you all wants the truth, don't you?" and I said "yes", and he said "Mr. Johnny, I told you when this thing happened that if anything come of it I wasn't going to take the whole thing on myself." Then the negro told us how it happened.

Q. I will ask you if, at any time after you, after you got the defendants in the homicide office, and Ashcraft was confronted with Ware and those statements were made, whether or not there was any force or violence practiced on either of the defendants?

A. No, sir. They hadn't been in the office five minutes before Ware told us his story.

Q. I will ask you if at any time anybody struck either of these defendants?

A. No, sir.

Q. I want to ask you if any promise of immunity or hope of reward was held out to them for making any statements?

A. No, sir.

Q. You say that after this colloquy between Ware and Ashcraft, that Ashcraft was taken out of the room and Ware made statement?

A. Yes sir.

Q. I will ask you if at time he made a verbal statement to you concerning this matter?

A. Yes, sir.

Q. And after he made that statement, state whether anybody took a statement from him which was transcribed on [fol. 94] the typewriter?

A. Yes, sir. After that occurred, I think I called the Sheriff and Mr. Battle called you and Mr. Henry Waldauer,

a court reporter, was called, and Ware's statement was taken down in shorthand by Mr. Waldauer and reduced to type-writing.

Q. Mr. Becker, I will ask you if at any time while that statement was being taken by Mr. Waldauer, anybody mistreated or abused or struck this defendant Ware?

A. No, sir.

Q. I will ask you if anybody made any promises of immunity or held out any hope of reward to him for making that statement?

A. No, sir.

Q. I will ask you if that statement was freely and voluntarily made at that time?

A. It was, yes, sir.

Q. About how long would you say it took Mr. Waldauer to take this statement in shorthand and transcribe it on the typewriter?

A. Well, I think, General, he started shortly after two o'clock Sunday morning and I am guessing at the time, but I think he started shortly after two o'clock and it was possibly six or six-thirty, and it could have been seven o'clock when it was brought back and read back to him and he made his mark.

Q. And you are making a guess about the time?

A. Yes, sir. I wasn't watching the clock.

Q. I want to show you a paper writing here and ask you to tell us whether that is the statement as transcribed by Mr. Waldauer and made by Ware on the early Monday morning of June 16, 1941?

A. (Examines papers) Yes, sir, that is the statement.

Mr. McTighe: I object to the introduction of that statement, as not being the free and voluntary statement; also on the ground it *it* isn't signed by the defendant Ware.

[fol. 95] The Court: Objection overruled.

Mr. McTighe: I note my exception on both grounds.

Q. Mr. Becker, after this statement was transcribed by Mr. Waldauer I will ask you to state to the jury whether that statement was read back to Ware?

A. Yes, sir, it was.

Q. Will you tell us what happened about that?

A. After the statement was typed by Waldauer, Mr. Battle read the statement to Ware in the presence of Dr. McQuiston

and Sheriff Joyner and Mr. Ezzell and myself. After the statement was read to the negro, he stated that was his statement and that it was true and told us he couldn't write. He made his mark, Mr. Waldauer signed the statement and Ware swore to the statement.

Q. I will ask you if at any time anything was said about whether he could read and write?

A. At the time we read the statement to him, he was offered a copy of the statement and he stated that he couldn't read, so all of the others up there were furnished with a copy of the statement and they followed the reading by Mr. Battle.

Q. Did Dr. McQuiston at that time have a copy of the statement?

A. Yes, sir.

General Gerber: We want to offer this statement in evidence at this time and mark it as an exhibit.

Mr. McTighe: I object to it.

The Court: Objection overruled, exception noted.

Mr. McTighe: Note my exception.

(The statement referred to was thereupon received in evidence and marked, "*Exhibit #1—Becker, Jury in.*")

[fol. 96] General Gerber: We ask your Honor at this time for permission to read this statement to the jury.

The Court: All right.

(Exhibit #1—Becker—Jury in, in words and figures as follows, thereupon read to the jury):

Q. Now, Mr. Becker, after that statement was reduced to typewritten form, and after it was read to the defendant Ware, in the presence of those whom you have named, including Dr. McQuiston and Mr. Henry Waldauer, I will ask you what was done then.

A. The negro was asked to remove his clothes which he did and Dr. McQuiston made an examination of him.

Q. After that examination was made what was done?

A. After that was done, Dr. McQuiston and the rest of us went to the theft squad office where Mr. Ashcraft was and Dr. McQuiston talked to Mr. Ashcraft, and questions were asked Mr. Ashcraft as to whether anyone had mistreated him and he said no, that he had been treated all right, and we asked him about the killing of his wife, and he stated, in the presence of Dr. McQuiston, that he had hired the negro to

kill his wife and that the negro had agreed to do it for \$100.00. He was asked why he did that and he said that since her operation and since she had had the flu, she had got to where he couldn't live with her; that she was hell to live with; that while they were in company, she was all right. He said that he had offered her the automobile and the house and \$1500.00 in cash if she would leave him and she wouldn't do it and then he got the negro to kill her.

Q. Mr. Becker, I will ask you whether any examination of Mr. Ashcraft was made at that time by Dr. McQuiston?

A. Yes, sir. After Ashcraft was through talking, he was [fol. 97] asked to strip and he was examined by Dr. McQuiston.

Q. State to the jury whether Dr. McQuiston stayed or left?

A. He left right after that.

Q. Will you tell the jury if any statement of any kind was taken from Mr. Ashcraft after that?

A. Yes, sir, there was a statement taken from him. Right after Dr. McQuiston left, Mr. Ashcraft was given breakfast and then Ware's statement was read to Ashcraft and that was while Ashcraft and Ware were together, and Ashcraft tried to get Ware to change his statement, and the negro insisted that what he had told us was true, and Ashcraft said "Tom, you know Mrs. Walker saw you leave there that morning." They took Ware out and I said to Ashcraft: "You know Mrs. Walker didn't see anybody out there," and he said "I know it"; I just wanted him to change his story." Then Mr. Waldauer took Mr. Ashcraft's statement and transcribed it.

Q. Did I understand you to say Mr. Ashcraft had breakfast that morning?

A. Yes, sir.

Q. I hand you a paper writing and ask you to tell the jury what that is?

A. (Examines paper) This is the statement of E. E. Ashcraft.

Q. Mr. Becker I will ask you if, after the statements was transcribed by Mr. Waldauer, it was read back to Mr. Ashcraft?

A. Yes, it was read back to him. I read the statement and there was Mr. Ezzell, Sheriff Joyner, Mr. Battle, Mr. Nelson Castle and Mr. Everett Pidgeon present at the time. Everybody including Mr. Ashcraft, was given a copy of this statement and I read it to him and after I got through read-

ing the statement I asked him to sign it and he told me he wanted to talk to his lawyer first. I said that was all right, then I said, "what is in this statement is true?" and he said [fol. 98] "yes, but I want to see my lawyer before signing." I think Mr. Castle and Sheriff Joyner may have questioned him along that line and he said the same thing to them.

Q. Did you force him to sign the statement?

A. No, sir.

General Gerber: I want to introduce this statement as Exhibit #2 to Mr. Becker's testimony.

The Court: All right.

(The document referred to was thereupon received in evidence and marked "Exhibit #2—Becker—Jury in)."

General Gerber: I ask your Honor's permission to read this statement to the jury.

The Court: All right, you may do so.

(Exhibit #2—Becker—Jury in, which was in words and figures as follows, was then and there read to the jury).

Q. Mr. Becker, I want to ask you, for the benefit of the record, if at the time of the taking of that statement, the statements made by Mr. Ashcraft were made freely and voluntarily?

A. They were.

Q. Was he forced to make any kind of a statement in this written statement?

A. No, sir.

Q. Was any promise of immunity or hope of reward held out to him?

A. No, sir.

Juror: He said he wanted to see a lawyer before signing?

A. Yes, sir.

Juror: When was the statement signed?

A. It never has been signed.

(At this point a recess was had).

[fol. 99] (Jury examines Exhibits #1 and #2—Becker—Jury in).

Q. Mr. Becker, after this statement was read to Mr. Ashcraft, and he said he wanted to see his lawyer, was there any effort made to coerce him or influence him in anyway to sign that statement?

A. No, sir.

Q. Now, after the investigation was completed on that Monday morning, I will ask you to state whether you had anything further to do with the case?

A. After that was completed I went home and to bed.

Q. At any time after that Mr. Becker, I will ask you to state to the jury whether you had occasion to do anything else in connection with the case, with the defendant Ware?

A. Yes, sir. The next morning, Ware was placed in a car with Mr. Ezzell and myself and we drove to Ware's house and directed him to show us how this thing happened, and how he got to Mr. Ashcraft's house. He directed us to drive to Mr. Ashcraft's house and when we got there he showed us how the car was parked and how he waited and when Mrs. Ashcraft came out of the house, he stated that he stood on the left side of the back until they got in the car, and then he got in the car and he directed us out to this place. He also stated that he had stayed on the running board and smoked some cigarettes while waiting for her to come out and threw the cigaret stubs on the floor board. He directed us to the scene of the killing and showed us how they parked the car and went down. I took the place of Mr. Ashcraft and he showed us how they walked, and Mr. Ezzell walked beside him, and he showed us where he took the wrist watch from her, and he took us down to the water's edge to show us how far in the water she was when he hit her with the rock, and that was the last contact I had with him.

[fol. 100] Q. Did you ask him what kind of cigarets he had smoked?

A. Yes, sir, and he said they were Camels.

Q. I will ask you if, on the night you picked Ware up on Oriole Street, you handcuffed him?

A. No, sir.

Q. When you took him from the jail the following morning to the scene of the crime, did you handcuff him?

A. Yes, sir.

Q. I want to show you a plat introduced as exhibit #6 to your testimony and ask you if you will be kind enough to show us where Oriole Street is and where Ware lived at that time?

A. This (indicating plat) is Chelsea right here and right in here is where Ware lived.

Q. How far is it from Ashcraft's house, on Stanton Road, down Chelsea and up Oriole Street to Ware's house?

A. I believe it is about a mile.

Q. Put an "X" right there where you have indicated.

A. (Witness marks an "X" on Exhibit #6).

Q. Mr. Becker, I will ask you if, at the time you went down to the slough with the defendant Ware, you asked him to indicate to you the type of rock he used in at the time Mrs. Ashcraft was killed?

A. Yes, sir, we did; and he picked up a rock and showed us the size and type of rock it was.

Q. Did you bring that rock in?

A. Yes, sir.

Q. I will show you some rocks and ask you to state whether or not those are the rocks that were brought in from the slough on that morning out there when you were with Ware?

A. Yes, sir, they are the rocks he picked up and showed [fol. 101] us as to size. We asked him to show us the size of the rock.

Mr. McTighe: It isn't your contention that those are the rocks with which this woman was killed?

General Gerber: No. I want to make them exhibits.

Mr. Bickers: I am under the impression that the testimony relative to those rocks is not competent.

The Court: On what ground?

Mr. Bickers: They are not the rocks. The Attorney General says they are not the rocks.

The Court: Objection overruled.

Mr. McTighe: I want to join in that objection on the ground that unless he connects these rocks up with the crime, they are not competent.

The Court: Objection overruled.

Mr. McTighe: Note our exception.

Mr. Bickers: Note my exception. I further object on the ground it is admitted they are not the rocks.

The Court: Overruled.

Mr. Bickers: Exception.

(Rocks referred to received in evidence and marked Exhibits #2 and #3—Becker—Jury in.)

Q. In the course of this investigation, after the defendant Ware was brought to jail, I will ask you whether his shoes were taken from him?

A. Yes, sir, they were.

Q. I show you a pair of shoes and ask you if these are the shoes that he had on on the night you brought him in?

A. Yes, they are the shoes.

Q. I am going to ask you if, at any time after those shoes came into your possession, you made any effort to match either of those shoes with the footprint on that seat?

[fol. 102] A. I did, yes, sir.

Q. I will ask you to state whether, in your opinion, either of those shoes match that print?

Mr. McTighe: Don't answer that until I make my objection.

That calls for an opinion.

The Court: Objection overruled.

Mr. McTighe: Note my exception.

A. Yes, sir. I matched them up. I matched the shoe with the footprint.

Q. You say in your opinion one of the shoes matches with the footprint.

A. Yes, sir, the left shoe.

Q. How did you undertake to match them? Do you mind coming down and showing the jury what you did?

A. (Witness leaves stand) This mud here is the outline of sole. (Witness places shoe on automobile cushion) That's where the wet shoe had been placed on the upholstery.

Juror: In your analysis is there any grease in that mud, or is it just mud?

A. It is just sandy mud.

Juror: Has there been any analysis made to see if the mud on the cushion is the same as on the shoe?

A. No; of course the shoe was recovered some days later. We didn't get the shoe until the negro was arrested.

Q. Was there any mud or dirt on the shoe at that time?

A. The shoes are in the condition now as when we got them.

General Gerber: Make it exhibit #5.

(Exhibit #5—Becker—Jury in—received in evidence).

Q. Mr. Becker, I will ask you to look at this photograph and tell us what that is?

[fol. 103] A. This house here is the negro George Pryor's house. We went in there first. This is the house where Ware lived. We went in this door here; he was living in front room.

General Gerber: We want to make this photograph exhibit #6.

(Exhibit #6—Becker—Jury in—received in evidence).

Q. I will show you another photograph and ask you to state what that is?

A. This photograph shows Chelsea, going out Chelsea Street.

Q. I will ask you if there is a bridge shown on that picture?

A. Yes, sir, there is a bridge shown right here.

Q. Where is that bridge located with reference to Oriole Street if Oriole Street appears in the picture?

A. This is Oriole Street here.

Q. The street running across is Oriole?

A. Yes, sir.

Q. Can you see in that picture any drug store?

A. Yes, sir, there is a drug store further down.

Q. I show you another picture and ask you if that picture shows the same street?

A. It shows the bridge up here and the drug store.

Q. Place an "X" on the place where the drug store is.

A. (Witness marks "X" on photograph).

Q. You say Oriole Street runs across?

A. Yes, sir.

Q. General Gerber: We want to introduce these pictures in evidence and mark them Exhibit 7 and 8.

(Exhibits #7 and #8—Becker—Jury in—received in evidence and examined by Jury).

General Gerber: You may take the witness.

Cross-Examination.

By Mr. Bickers:

[fol. 104] Q. Mr. Becker, how long have you been in the capacity of Deputy Sheriff?

A. About 16 years.

Q. How long with the sheriff's office in Shelby County?

A. That full time.

Mr. Bickers: I want the record to show, your Honor, that on behalf of the defendant Ashcraft at this time I move that the Court strike from the record any reference to the unsigned statement of the defendant Ashcraft, on the ground that it isn't shown that it was freely and voluntarily made; that the record discloses that it was unsigned; and the record further shows that Ashcraft was confined and never out of the presence of the officers from the time that he was first arrested on the night of June 14th until this so-called statement or confession was presented to him at 7:30 Monday morning. Further, there is no evidence that he was afforded counsel or advised as to his constitutional rights.

The Court: Motion denied.

Mr. Bickers: I except to that.

Q. What did you do before you went in the sheriff's office?

A. I was a machinist and engineer.

Q. Who with?

A. I worked for the Coca-Cola Bottling Company and the New Grape Bottling Co.

Q. Is that the Coca-Cola Bottling Company operated by Mr. Pidgeon?

A. Yes, sir.

Q. Mr. Becker, as I understand it, when report was made to you that this murder had been committed out here on Raleigh Road, you exerted every effort to find a clue?

[fol. 105] A. That's right.

Q. You examined a number of people?

A. Yes, sir, we did.

Q. Did you make a thorough investigation of Mr. Ashcraft's associates and habits and ways of living?

A. We talked to some people about that, yes.

Q. As a result of your investigation you arrested Cora Taylor and brought her to jail?

A. I think we had three negroes: Cora Taylor and Plummer and Kimbrough.

Q. Did you arrest them or just take them into custody?

A. Just had them in custody.

Q. How long did you keep Cora Taylor here— ten days?

A. I am not going to say exactly, because the jail records will reveal that. I really don't know.

Q. Did you examine her at the time of her incarceration?

A. I talked to her several times.

Q. You knew she was the maid of the defendant Ashcraft?

A. Yes, I knew that.

Q. You sent for her and came up here on the night of June 5th?

A. We left word.

Q. Did you examine her that night?

A. Yes.

Q. And that's the same night that you examined Mr. Ashcraft on the 5th floor for several hours?

A. Yes, sir.

Q. Did you bring Cora Taylor and Mr. Ashcraft together that night?

A. No.

[fol. 106] Q. I assume you gave Cora a very thorough examination?

A. I did.

Q. Did she give you any information that tended to incriminate Mr. Ashcraft?

A. She did not.

Q. Did she any time, from the time she was brought up there until she was released—which you won't say was as much as ten days—did she ever say a word to you that incriminated Mr. Ashcraft?

A. No, sir, she didn't.

Q. Did she say that Mrs. Ashcraft usually carried a large sum of money on her person?

A. She didn't say usually. She said she had seen her with some money in her purse.

Q. Why did you keep Cora up here ten days?

A. Mr. Bickers, we asked Mr. Ashcraft who he thought might know something about this, and he said that Cora may have seen some money his wife had because she knew she was going to make that trip.

Q. Who else did you bring up here and keep in jail several days, except Cora Taylor?

A. A negro by the name of Plummer. I think he was Cora's boy friend.

Q. You got no information from him?

A. No, sir.

Q. Nothing that tended to incriminate Mr. Ashcraft?

A. No, we didn't.

Q. You brought a young lady up here by the name of Miss Leah Barnsfind, didn't you?

A. Yes sir.

Q. During your investigation you learned that he knew [fol. 107] Miss Barnsfind and you made that known to your associates and they were instructed to bring her in? And brought her in?

A. That's right.

Q. Did you talk to her?

A. I think I talked to her one evening. We had information that this young lady had been staying at Mr. Ashcraft's house and we were talking to her about her connection with Mr. Ashcraft.

Q. What did she tell you?

A. She told us that she had stayed at Ashcraft's; that at one time she lived there with Mr. and Mrs. Ashcraft, and since her death had called him up several times on the telephone.

Q. She was a young woman about 18 years old?

A. I imagine so.

Q. I take it you talked to Mr. Ashcraft's neighbors?

A. We talked to some of them. They didn't say anything against him.

Q. Not a single soul personally that you talked to said one thing that led you to believe that they thought Mr. Ashcraft was a man that would kill his wife or hire somebody to kill her?

A. That's right.

Q. You found out during your investigation that he worked for Korsmo Construction Company?

A. Yes sir.

Q. And naturally you were interested in whether he worked the day this murder was committed?

A. I was interested in him or anybody else.

Q. When he told you he worked on the day of the crime, [fol. 108] naturally you went to the construction company to verify that?

A. I talked to somebody out there but I've forgotten his name.

Q. Did you talk to anybody out there where he worked with reference to his calmness on that occasion?

A. Yes and they said he was just like any other day.

Q. Mr. Becker, during all of this entire investigation, which lasted ten days, you considered the fact that he told

you that his automobile wasn't in condition and that he said something about amyta! that didn't suit you, and what else—

General Gerber: Just a minute. Let him ask the question.

Mr. Bickers: I want to know what else.

The Court: Objection overruled.

General Gerber: He started the question and didn't finish it. I would like to hear the question again.

The Court: All right. Ask it again.

Q. You found in your investigation that the condition of his automobile wasn't like he told you, and that he had made some statement about amyta! that you didn't think was correct, and what else?

A. Are you talking about the Saturday night?

Q. I am asking you why you brought him up here.

A. Because it was such a brutal—

Q. Don't make a speech, Mr. Becker.

A. I'm telling you—

Q. Just answer my question. You say you had found that his automobile wasn't in the condition he claimed?

A. That's right.

Q. And in your opinion he had not told you the facts with [fol. 109] reference to the amyta!?

A. That's right.

Q. What else?

A. We talked about the condition of his wife's body.

Q. I haven't got to that.

A. You asked me what I talked to him about and I tell you about the condition of his wife's head; that if it had been a robbery, one link would have been sufficient.

Q. Now, how did Mr. Ashcraft get to the 5th floor?

A. Mr. Key went out and got him.

Q. You sent for him? And when he got there you and Mr. Battle were in the room?

A. I don't know whether we were in the room or downstairs. He was carried to the room.

Q. You didn't start talking to him until you got to the 5th floor of this building?

A. No, sir, that's my office.

Q. And that's what you call the homicide office?

A. Yes, sir.

Q. You have a drop light in there?

A. Yes, over the desk.

Q. How strong is that light?

A. About 100 or 150 watts.

Q. You have a sink in the corner?

A. Yes, sir.

Q. You have a finger print machine.

A. We have a table with an ink pad and a holder to hold the cards.

Q. When you got him in that room you sat him down how far away from the light?

[fol. 110] A. The light is right over the desk.

Q. Over his head?

A. I said over the desk.

Q. Was he sitting on one side of the desk and you on the other side?

A. I think Mr. Ashcraft was sitting on the north end of the table and I was on the west side and I believe Mr. Battle was on the other side, opposite me.

Q. When you got him in that position did you immediately start talking to him about this tragedy?

A. Yes, we asked him if he had any further clues, and he stated he didn't and then we began to talk to him about himself; how old he was, where he was born and if his parents were alive, and about his first wife, and he told us about that, and then we started talking to him about the killing.

Q. Did you tell him at that time that you believed he had killed her?

A. Not until we talked to him for some hours; I would say in the neighborhood of 11:00 o'clock.

Q. You took him in there at 7:30 and it was 11:00 o'clock before you charged him with being the murderer of his wife?

A. Around about that time.

Q. During the interim of time between 7:30 and 11:00 o'clock, you and Mr. Battle had piled him with questions backwards and forwards?

A. Yes, we talked to him.

Q. And he had personally denied that he knew anything about who had killed his wife?

A. He stated to us that he didn't know. After we pointed this out, he stated that everything pointed towards him, but [fol. 111] he had no explanation to make.

Q. And that's when you told him you believed he killed her?

A. Shortly after that.

Q. Did you question him a while and then Mr. Battle would take over and question him a while?

A. If I thought of a question I would ask him, and Mr. Battle would do the same thing.

Q. Did you tell him during your examination that you had been all over the county and that you hadn't found one single, solitary person who had pointed the finger of guilt at him?

A. No, I didn't.

Q. Did you tell him at any time between 7:30 and 11:00 o'clock that, "Now, Mr. Ashcraft, we haven't any clues except the discrepancies in your statements about the amytal and the automobile." Did you tell him that was all you had—

A. No, sir.

Q. —that indicated his guilt?

A. No, sir.

Q. What did you tell him to make him say "I know everything points toward me?"

A. We explained his discrepancies in his testimony about the automobile and his story about the amytal, and we went all through this thing about him telling us that his wife wasn't a woman who would let anybody take advantage of her—he had told us she would fight back—and told him that her clothing was not torn and there were no bruises on her body other than on her head, and then he said "I know everything points toward me."

Q. What was it about his denial that caused you to tell him you believed he killed her?

[fol. 112] A. I told him that because he had no explanation to make for the stories he had told us.

Q. About the automobile and the amytal and the pin on her chest?

A. And about the money.

Q. And that was the only information you had in your mind at that time that would justify you in accusing him of having murdered his wife?

A. You say what I had in my mind?

Q. I am not talking about what you had in your mind.

A. Well, that's what you asked me.

Q. Those are the only facts you had on which to base your accusation that he had killed his wife?

A. That's correct.

Q. Now, when you told him he killed his wife, what did he say?

A. He said he didn't do it.

Q. Why didn't you turn him out of there then.

A. Because he hadn't made any explanation yet about those things. The facts about the automobile and the amy-tal and those things.

Q. And he denied it for five hours?

A. Yes, sir.

Q. And you and Mr. Battle had questioned him closely, one on one side and one on the other side for five hours?

A. Yes, sir.

Q. And you asked him everything you could think about that tended toward his guilt during that five hours?

A. Yes, sir.

Q. And you had gathered nothing except what you have testified about up until then?

[fol. 113] A. That's right.

Q. Why didn't you turn him loose then?

A. Because he hadn't explained those things.

Q. Well, he told you he couldn't explain them.

A. When?

Q. Did you tell him to give an explanation?

A. I asked him for an explanation. I asked him about the amy-tal, what he told us following the finding of the body. He told us then that she took amy-tal that morning.

Q. Between 7:30 and 11:00 that night, did you ask him about the watch?

A. Yes, sir.

Q. What was his explanation about that?

A. At that time he told us he didn't know how the watch got in the dresser drawer; that she usually kept it on the vacuum box.

Q. Your testimony is that you told him at that time that you found the watch in the drawer?

A. We might have told him at a previous time.

Q. What did Cora Taylor tell you about finding the watch?

A. I don't think she told us anything the first night. I may be wrong, but I think Cora told us she had taken the watch off the vacuum cleaner box and put it in the dresser drawer.

Q. How long did you and General Battle examine him on that Saturday night?

A. We left him about 3:00 o'clock Sunday morning.

Q. Sunday morning, after you had charged him with killing his wife. What information did you get from him between 11:00 o'clock and 3:00 o'clock, at the time you quit your examination that you had not already gotten?

[fol. 114] A. He still didn't explain the things we were asking him about.

Q. Did he still continue to deny that he had killed her?

A. Yes, sir.

Q. From 7:30 until 3:00, at which time you and General Battle quit examining him, you had elicited from him no information other than his lack of explanation about the amytal tablets and about the pin on her dress and the condition of his automobile?

A. That's right.

Q. That's all you had gotten in eight or nine hours. Why didn't you turn him loose then?

A. Because he didn't explain those things.

Q. You maintained at that time, and do now, that if he hadn't explained those things during that 8 or 9 hours, that by reason of longer confinement and more examination he would explain them?

A. No, sir.

Q. Then why didn't you turn him out?

A. Because he hadn't explained them.

Q. Why did you leave him at 3:00 o'clock Sunday morning?

A. Because I was tired. I had been working day and night for ten days.

Q. You were tired then?

A. Yes, sir.

Q. Had Mr. Ashcraft slept from 7:30 until 3:00 o'clock that night?

A. No.

Q. Had he been out of that chair?

A. Oh, yes. I think we carried him to the toilet and he [fol. 115] went to the sink to get a drink of water.

Q. During that examination?

A. Yes sir.

Q. But all the time he was in that chair; this light was dropped down in front of him?

A. It was over his head.

Q. Who took over when you and Battle left off at 3:00 o'clock?

A. When I left at 3:00 o'clock I believe I met Mr. Ezzell on the 5th floor and told him we were going downstairs to try to get a little rest.

Q. Why did you get another office- to come in and stay with him in your absence? You had no idea he could break out?

A. I didn't get any other officer. I simply made the statement to Ezzell that I was going downstairs.

Q. And he came in?

A. He was in the corridor of the jail.

Q. What was your purpose in having him in the main office on the 5th floor? Why couldn't you have left Mr. Ashcraft by himself in that jail house with nobody with him?

A. I could have.

Q. Why didn't you?

A. I didn't tell Ezzell to go in there.

Q. And you didn't tell him to stay out?

A. No, sir.

Q. And you didn't have any idea of telling him to stay out, did you?

A. No, sir.

Q. When did you come back on the next shift?

A. I came back the next morning, Sunday morning, in the neighborhood of 6:00 or 7:00 o'clock.

Q. Was Ezzell there when you came back?

[fol. 116] A. Yes, sir.

Q. In the room with Ashcraft?

A. Yes, sir.

Q. Anybody else in there?

A. I don't believe so.

Q. Who came back with you?

A. Mr. Battle.

Q. When you and General Battle took over at 6:00 o'clock Sunday morning, what became of Mr. Ezzell?

A. He left.

Q. Did Mr. Ezzell make known to you and Mr. Battle the result of his questioning of Mr. Ashcraft from 3:00 o'clock Sunday morning until 6:00 o'clock Sunday morning?

A. I don't remember whether he told us anything about it or not; he may have.

Q. Did he say that Ashcraft hadn't admitted a thing?

A. He might have. I won't say he did or didn't.

Q. He didn't say "This man has confessed?"

A. No, sir.

Q. What was the purpose of you and General Battle taking over at that hour with him up there?

A. To talk to him again.

Q. You had talked to him 8 or 9 or 10 hours?

A. That's right.

Q. And he had maintained his innocence after you had charged him with the crime. What did you hope to accomplish by further questioning this man?

A. Get an explanation of those things that we were asking him about?

[fol. 117] Q. You still wanted to know about the automobile and the amytal tablets and the pin on her chest?

A. That's right.

Q. How long did you and Battle question him that time?

A. I think we left around noon Sunday.

Q. Was he still sitting in that chair?

A. When we left there?

Q. When you got there. When you got there and relieved Ezzell was he still in that chair?

A. I think he was, yes, sir.

Q. Had he been asleep to your knowledge?

A. Not to my knowledge.

Q. And you and Battle stayed there until 12:00 o'clock noon Sunday?

A. About that time.

Q. Did you and Mr. Battle continue to question and cross question him during that time?

A. Yes, sir.

Q. From 6:00 o'clock until 12:00 o'clock Sunday?

A. Yes sir.

Q. And all of the questions you asked him pertained to this tragedy?

A. Yes sir.

Q. He maintained at all times from 6:00 o'clock until 12:00 o'clock Sunday that he hadn't killed his wife?

A. Yes, he said he didn't.

Q. And he said he didn't have anything to do with it?

A. That's right.

Q. Now, you had absolutely no evidence in the world except the discrepancies in his stories, as you have stated, at 12:00 o'clock—

[fol. 118] A. What?

Q. You had no evidence of this man's guilt; you had no evidence that he had killed his wife except that he had said

his automobile was out of shape and you had found it wasn't; he said she had taken amytal and you found a discrepancy in that statement, and you hadn't found any evidence of a pin having been in her bosom?

A. That's right.

Q. All right. Why didn't you turn him out then?

A. I wanted an explanation of those things.

Q. Well, you had had him there for 16 hours. Is it your testimony now that you would have kept him there until this very day until you had his explanation of those three things?

A. No, sir.

Q. Then why didn't you turn him out at 12:00 Sunday?

A. Because I wanted an explanation.

Q. If you hadn't gotten an explanation about those three inconsequential matters in 16 hours, how much longer do you think you would have kept him to get that explanation?

A. I don't know. That's something that didn't come up.

Q. What didn't come up?

A. About how long I would have stayed there; but I'll tell you this: that if he hadn't admitted it, he would still have been charged with murder on those three inconsequential matters as you call them.

Q. You mean now to tell this jury that if he hadn't later said what you say he said there would have been a charge of murder placed against him?

A. I do.

Q. Then why didn't you swear out a warrant for him at 7:30 Saturday night when you sent out and got him, and let [fol. 119] him have his hearing before a magistrate if you were satisfied enough to charge him with murder that night?

A. I wasn't satisfied at that time. I was trying to give the man every opportunity in the world to attempt to explain those things.

Q. At the expiration of 16 hours examination by you and First Assistant Attorney General Battle, whatever information you had gathered, you had gathered no more than you had at 7:30 Saturday night, June 14th?

A. What?

The Court: I didn't understand the question either.

Q. I said that after you had examined this man from 7:30 Saturday night until 12:00 o'clock noon Sunday, some six-

teen hours, you had gathered no more information than you had Saturday night at 7:30 P. M.?

A. That's correct.

Q. You had already told him that you believed he killed her. Why didn't you say to him, "Ashcraft, I am going to swear out a warrant for you charging you with the murder of your wife. Get you a lawyer if you want one, but I am charging you with murder." Why didn't you say that?

A. Because I wanted to give him every opportunity to make an explanation.

Q. Well, you had give him 16 hours?

A. I wanted to give him some more.

Q. And you did give him some more?

A. I talked to him some.

Q. And who with?

A. With Mr. Battle.

Q. Who took over at 12:00 Sunday when you left?

A. Mr. Ezzell I think.

[fol. 120] Q. Anybody with him?

A. As far as I know there wasn't.

Q. Now when Mr. Ezzell took over did you say: "Mr. Ezzell, this man has denied everything; he denies his guilt in toto"?

A. I may have said something like that.

Q. And did you say "Now you stay here and talk with him and try to get an explanation about these three things!"

A. No, I did not.

Q. Did you tell Ezzell to try to get Ashcraft to admit killing her?

A. No, sir.

Q. Then why did you leave Ezzell there?

A. To talk to him.

Q. Now when did you take over the next time?

A. After I left at 12:00 o'clock Sunday?

Q. Yes.

A. Around 6:00 or 7:00 Sunday night.

Q. Had Mr. Ezzell gotten anything else from this man when you came back and started your examination, at 6:00 o'clock Sunday night, other than his positive denial that he had had anything to do with killing this woman?

A. No, sir.

Q. You had had him for 16 and 6, that's 22 hours. Did Mr. Ezzell have a memorandum of what he had said to him?

A. If he did I didn't see it.

Q. And he didn't say anything except he denied it?

A. That's right.

Q. Would you say that Mr. Key had been in there during this last six hours while you were off?

A. He didn't mention it to me.

Q. When you left at 12:00 o'clock Sunday you went [fol. 121] home and rested?

A. Yes sir.

Q. Mr. Becker, do you know, of your own knowledge, whether or not the defendant E. E. Ashcraft, had ever been asleep a moment from 7:30 Saturday night until you took over at 6:00 o'clock Sunday afternoon?

A. Of my own knowledge, I don't know.

Q. He wasn't asleep when you got there at 6:00 o'clock Sunday morning?

A. No, sir.

Q. And he wasn't asleep when you went there at 12:00 noon Sunday?

A. No, sir.

Q. And he wasn't asleep when you took over at 6:00 o'clock Sunday night?

A. No, sir.

Q. During your investigation and cross-examination of this man, when he wanted water or cigarets or coffee, was he allowed to have them?

A. Yes sir.

Q. Was he sitting at the end of this table under this light when you got back there Sunday night at 6:00 o'clock?

A. I believe he was sitting in the same chair.

Q. Up until 6:00 o'clock Sunday night, as far as you know, this defendant, E. E. Ashcraft, had never been out of the presence of an officer of the law?

A. As far as I know he hadn't.

Q. Is that fifth floor barred up.

A. Yes, there are bars all over it.

Q. When you and General Battle went in there and took over at 6:00 o'clock, how long did you stay in there?

[fol. 122] A. I think until about 11:00 o'clock.

Q. Now, from 6:00 o'clock Sunday until 11:00 o'clock he maintained his innocence, didn't he?

A. That's right.

Q. Why then, after 26 hours of questioning, why then didn't you prefer your charge of murder and advise him that he had a right to be tried?

A. We were still asking him for an explanation.

Q. He had not yet explained those things, but he had done the best he could?

A. I don't know.

Q. He would answer your questions?

A. Yes, sir, he would answer questions.

Q. In your eagerness to get an explanation, you asked the defendant, E. E. Ware—

General Gerber: Ashcraft.

Q. —Ashcraft, I mean, whether he had been riding people to and fro from his work?

A. That question was probably asked. I don't know when, but it was.

Q. And in order to help you as much as he could, he named a white man and a negro that he had carried back and forth on a few occasions?

A. I don't think he had named anybody. I think Mr. Ashcraft had told us that he hadn't made it a practice to ride anybody back and forth, but I know he hadn't named anybody.

Q. Never?

A. Well, when he told us about Ware, but not until then.

Q. That's what I'm talking about. Did he tell you, in response to a question, about 11:00 or 12:00 o'clock Sunday night: "I have ridden some people; one man by the name of [fol. 123] Tackett?"

A. No.

Q. You examined him until 1:00 or 2:00 o'clock Monday morning, or how long did you pursue your examination Sunday night?

A. At about 11:00 o'clock Mr. Ashcraft asked Bob Ezzell. Mr. Battle and I left and Mr. Ezzell went in and in a short while, possibly thirty minutes or so, Mr. Ezzell asked me to come in. I went in and Mr. Ezzell asked Mr. Ashcraft to repeat to me what he had told Ezzell and he did. That was about the negro killing his wife. He told us the negro's name was Tom Ware. We asked him how he knew his name and he said that he had worked on the bowling alley job on Cleveland with him, and we asked him if he had ever ridden in the car with this negro, and he said that he had, and we

asked him if he knew where the negro lived and he told us that he did.

Q. Did he say he believed a negro killed his wife?

A. No, he said a negro killed her.

Q. And then naturally you wanted to know where the negro lived.

A. Yes.

Q. You went out and picked up Tom Ware and brought him to jail?

A. Yes.

Q. And you stayed with Ware until he made this "X" on his statement?

A. Yes sir.

Q. Who else stayed with him?

A. Others would come in and out of the office.

Q. Was Key there?

A. He came in once or twice.

Q. Mr. Becker, you say that this statement of Mr. Ashcraft, or whatever you want to call it, was transcribed [fol. 124] about 8:00 o'clock Monday morning?

A. I think it was taken about 6:00 o'clock. That's my best recollection.

Q. When was it transcribed?

A. A short time later it was transcribed.

Q. How long did it take the stenographer to transcribe it?

A. Possibly an hour; maybe a little longer than that.

Q. What time did Mr. Pidgeon come in?

A. Mr. Pidgeon got there a short time before the stenographer got through with the statement.

Q. What time would you say that was?

A. I am not positive. I think the statement will show the time.

Q. I'm not asking you what the statement will show; I am asking you.

A. I don't know.

Q. Do you know when Mr. Castle got there?

A. I think they both came pretty close together.

Q. Were they both there at 9:30?

A. They could have been.

Q. Did you get through this business you have testified about of giving everybody in the room a copy of this statement of Ware at 9:30 Monday morning?

General Gerber: Ware or Ashcraft?

Q. Ashcraft.

A. I wouldn't say it was 9:30 or 9:00 o'clock.

Q. Would you say in your best recollection it was 9:30 or 9:00 or about that time?

A. I would say in that neighborhood. I don't know the time, Mr. Bickers. I wasn't watching the clock and the [fol. 125] time I am giving you is just a guess.

Q. You were tired?

A. Yes sir.

Q. You knew you were dealing with a murder case?

A. Yes sir.

Q. And you wanted some outside folks to back you up, didn't you?

A. Yes, sir, I really did.

Q. Why did you do that?

A. Because we know what you lawyers do and we wanted some distinterested parties up there.

Q. You know what we lawyers do when we got in court, and we know what you do when you get people on the 5th floor, too.

General Gerber: We object to that.

The Court: Let's proceed, gentlemen.

Q. What is your best recollection as to the time Monday morning when you passed around these copies of this so-called statement and asked Mr. Ashcraft about it?

A. Mr. Bickers, I have no distinct recollection of the time. I could have been 7:00 or 8:00 or 9:00 o'clock. It was early in the morning.

Mr. Bickers: Take the witness.

The Court: We will adjourn until 9:30 Monday morning.

(Adjournment.)

October 26, 1942. 9:30 A. M.

GEORGE A. BECKER resumed the stand.

Mr. Bickers: I want to ask the witness one other question, your Honor.

The Court: All right, sir.

Recross-examination.

By Mr. Bickers:

[fol. 126] Q. Mr. Becker, did you ever whip a prisoner while he was in jail and in custody?

General Gerber: I didn't get the question.

The Court: Repeat the question.

Q. Have you ever whipped a prisoner?

A. I have in my necessary self-defense on several occasions. I have been attacked and I have beaten them off.

Q. Do you recall a man named James Evans who was arrested less than a year ago and you examined him in jail?

A. I do.

Q. Did you whip him?

A. I didn't whip him. It took four of us to subdue him. We were questioning him and the negro ran amuck and it took four of us to subdue him. He was questioned about a killing.

Q. Was he in jail at the time?

A. Yes, sir, he was.

Q. Who was with you at that time?

A. I think myself and Key and Mr. Barboro and the turnkey on the floor.

Mr. Bickers: Your Honor, before I ask this, I want your Honor to rule on it. I want to ask him the result of the doctor's report on that admitted whipping. It is a part of the records of this Court and I want to ask him about the doctor's report.

General Gerber: We object to it. It has nothing to do with this case.

The Court: What is the purpose of that, Mr. Bickers?

Mr. Bickers: Going to this witness' credibility.

General Gerber: He admits that he had trouble with Evans.

The Court: Ask your question and I'll rule on it.

Q. I will ask you if you recall Dr. Louis LeRoy's report, [fol. 127] filed as part of the evidence in the case of the State vs. James Evans, this negro you say you whipped?

General Gerber: We object to it.

Mr. Bickers: I want to put Dr. Louis LeRoy's report in the record.

General Gerber: We object to it.

The Court: Objection sustained.

Q. How many times did you strike Evans?

A. I have no idea. I was protecting myself.

Mr. Bickers: I assume, now, your Honor, it is proper to show the jury the extent of his whipping, or whatever you may term it, and let the jury judge as to whether the severity of this punishment that this record shows was necessary in his own self-defense.

The Court: The Court will not permit you to put Dr. LeRoy's report in.

Mr. Bickers: May I use it for reference in this case, because it is part of the record of the court?

The Court: I don't understand what you mean by the term "reference."

Mr. Bickers: I shall refer to this—

The Court: You may refer to anything in the record.

Mr. Bickers: Not in the record in this case, but it is part of the Criminal Court record in another case.

The Court: The Court will not permit you to put Dr. LeRoy's examination of the defendant—what is his name?

Mr. Bickers: Evans.

The Court: —Evans, in this record. You may call Dr. LeRoy and put him on the stand and have him testify as to any fact pertaining to the case on trial.

Mr. Bickers: Of course he is not a witness in this case. [fol. 128] May I examine him as to the condition of this report? He is familiar with it.

The Court: Yes, you may do that.

Q. I want to ask you if you know, of your own knowledge, whether or not the examining physician showed that his face was swollen, cheek bone, and he had an injury to the left eye—

A. I know nothing about Dr. LeRoy's examination.

Q. You swore out a warrant for this man?

A. Yes, sir.

Q. And you testified in the habeas corpus proceeding?

A. No, sir, there was none held.

The Court: He has stated that he has—

that report of Dr. LeRoy's examination, so there is no object in examining him on that.

Mr. Bickers: I note an exception for the defendant Ashcraft.

Mr. McTighe: I'll join in that exception in behalf of the defendant Ware.

Mr. Bickers: That's all.

Cross-examination.

By Mr. McTighe:

Q. Mr. Becker, when we left off Saturday, Mr. Bickers had examined you at some length about Mr. Ashcraft. I'm going to ask you about the position of the car involved, that is, the position of the car, condition of the car, rather. I believe you testified that Mr. Ashcraft told you the radiator was leaking?

A. The front radiator hose, yes sir.

Q. You brought the car down and made certain tests?

A. Yes, sir.

[fol. 129] Q. And while you had it here you didn't put any water in it at all?

A. That's correct.

Q. Do you recall the defendant Ashcraft told you that his wife was going to take a trip and the night before they stopped at Jackson and Hollywood and got gasoline and had the oil changed for the trip?

A. That's what he said.

Q. Now don't you know as a matter of fact when a radiator is full of water, some of the water will at times leak out, but when it gets below that level where the leak is, it will stop?

A. Mr. Ashcraft didn't state where the leak was.

Q. As a matter of common sense, if the water gets below the level of that leak, then it won't run out?

A. That's possible.

Q. Did you talk to anybody about the condition of that car?

A. Only Mr. Ashcraft.

Q. Did you talk to any of his neighbors about the condition of that car?

A. No, sir. We had the car.

Q. You don't know of your own knowledge that that was known to some of the people in the neighborhood—the condition of the car?

A. No, I don't.

Q. You don't know that some of the people had seen him having difficulty of that kind with it?

A. No.

Q. That was never told to you by any neighbor?

A. No, sir.

Q. Now, I believe you told us that when Mr. Ashcraft [fol. 130] first said something to you about a negro killing his wife, you said to Mr. Ashcraft, "Well, if a negro killed your wife you probably hired him to do it."

A. Yes sir.

Q. Up until that point there hadn't been anything said one way or the other about anyone killing his wife, other than him?

A. That's right.

Q. And the proposition of him hiring the negro, that was your idea?

A. That's right.

Q. And you had nothing to base that on?

A. Except that I couldn't see how a white man could let a negro kill his wife and not tell the law about it.

Q. But you were the first to make the statement about "hiring"? You made that statement?

A. I certainly did.

Q. I hand you a copy of Mr. Ashcraft's statement. On the first page is this question and answer:

"Question: Who did you get to do this killing for you?

Answer: Well, this colored boy—what is his name—

. Tom Ware."

Q. Was that said?

A. Yes, sir.

Q. Did you hear that statement made?

A. Yes, sir.

Q. At that time, Ashcraft acted like he didn't know Ware's name?

A. That's what it says there.

Q. Now, on the second page of the statement of Mr. Ashcraft, that part of the paragraph which says: "I asked him how he would like to pick up fifty or a hundred dollars do-

[fol. 131] ing a little job and he said he would like to, said yes, I will be glad to make that." Did he say that?

A. Yes, sir.

Q. The next part, "And then there was nothing more said about it until he quit his job, and they transferred me over to the pumping station." Now see if I am correct about this: up until that point he says that nothing was said about it except that he offered Ware \$50.00 or \$100 to do a job?

A. There's the statement.

Q. Nothing is said about killing anyone up until that point anywhere in their conversation?

A. He asked him how he would like to make \$50 or \$100 doing a little job.

Q. That's the language of the statement?

A. Yes, sir.

Q. What was said by Mr. Ashcraft, according to that statement, is that he talked to Ware when they were working on this bowling alley job and asked him how he would like to make \$50 or \$100 and he said he would like to?

A. Yes, sir.

Q. And according to that statement he never said any more about it until the third of June?

A. That's right.

Q. In your investigation, you found out that the only time Ware ever knew Mr. Ashcraft was on that bowling alley job and on two or three occasions in June, as set out in this statement?

A. Yes, sir.

Q. Do you recall how many mornings your investigation revealed that Ware rode with Mr. Ashcraft?

A. No, sir, I don't.

[fol. 132] Q. Now, nowhere in this statement by Ashcraft is there any statement made that Ware knew where Mr. Ashcraft lived before this night?

A. Not before that night. However, Ware I believe told us in his verbal statement that he made up a story with Ashcraft that Ware was coming out there to buy a stove.

Q. There is nothing in Ashcraft's statement about that, is there?

A. No, sir.

Q. This statement says \$50 or \$100. Can you tell the jury now that no definite amount of money was agreed to?

A. It says in the statement \$50 or \$100.

Q. On page 4 of Mr. Ashcraft's statement: "He told me he bought himself an alarm clock so he could get up around 12 or 1 o'clock that night."

A. That's on the statement.

Q. Now, you searched Ware's house?

A. Yes, sir.

Q. Did you ever find an alarm clock?

A. I did not.

Q. There was no clock of any description in his house?

A. I didn't find one.

Q. There is a statement in there, on the same page, fourth page, about the defendant Ware coming back to get his hat; leaving his hat and coming back after it. Do you see that in the statement?

A. Yes, sir.

Q. Did he say at that time, or does the statement say anything about where Mr. Ashcraft's dog was when Ware came back after his hat?

A. I don't see it in the statement.

[fol. 133] Q. Nowhere in that statement is there any explanation about why or why not, if Ware came back about daylight, the Ashcraft dog didn't bark?

A. Not in here.

Q. What your information was about that dog is that the dog was a good watch dog and hated negroes?

A. I don't know about that.

Q. You do know that on the particular night that this woman was killed, from your investigation there was a Mr. Broadshaw that lives on Chelsea and Stanton Road, down by this corner that this car passed going from Ashcraft's house to Chelsea?

A. There may be.

Q. This man had three or four dogs, didn't he?

A. I don't distinctly recall him. There may be a man living there with three or four dogs.

Q. You remember Mrs. Walker?

A. Yes, sir.

Q. Don't you remember Mrs. Walker advising you that she complained to Mr. Bradshaw about those dogs barking on this corner all night?

A. We talked to Mrs. Walker and she said they had built a high fence around that field and had some horses and cows and some dogs there that barked at night.

Q. She didn't know what they were barking at?

A. No.

Q. The dogs were barking on that corner that night, from your investigation?

A. That's correct.

Q. That neighborhood around Stanton Road, particularly around Mr. Ashcraft's house, is inhabited by small trades people, people who ordinarily get up early and go to work?

A. I imagine so, yes, sir.

[fol. 134] Q. Small homes, but nothing big or pretentious about any of the homes?

A. No, sir.

Q. A lot of those people go to work about daylight?

A. I don't know.

Q. Did you investigate to see if any of the people who go to work early might have seen Ware around the house at that particular time?

A. I didn't ask them what time they went to work. Of course we tried to find out if they knew anything about this case, but I didn't ask them what time they went to work.

Q. About this hat, you searched the defendant Ware's house and never found any hat?

A. No, sir.

Q. There never has been any hat found in your investigation, has there?

A. That's correct.

Q. That statement on page 5 of Mr. Ashcraft's statement: "When company was there she was all right." That statement relates to the congeniality of Mr. and Mrs. Ashcraft?

A. The first part of that statement was "she had just got so we could not get along. When company was there she was all right."

Q. You had learned from an extensive investigation that Mr. and Mrs. Ashcraft apparently got along very well from what you could find?

A. Yes, sir.

Q. And you knew that at the time this statement was taken?

A. I can't say that I knew that.

Q. You know that from your investigation?

A. I know that from the investigation, yes.

Q. And you of course knew that when there was nobody [fol. 135] in there but the man and his wife, nobody could testify whether they got along or not?

A. Not unless they were there. Unless one of them had talked to somebody else.

Q. And you never heard of any argument they had?

A. No, sir.

Q. And of course Mrs. Ashcraft is dead, and she can't testify, and the only other person left is Mr. Ashcraft?

A. That's right.

Q. On page 6 of Ashcraft's statement:

"Question: Did you specify any particular place where this negro was to dispose of your wife?

Answer: No, I did not specify any special place."

A. That's in the statement. Further back in this statement he says he drove the negro down to this pool of water.

Q. In other words, that's a direct conflict with the other part of the statement?

A. You have the statement.

Q. One place says he did and the other place says he did not?

A. That's right.

Q. The last question, starting on page 6:

"Question: Did you tell the negro to make it appear as though it was a robbery?

Answer: No, I just told him to make away with her—that is all."

Q. That appears there?

A. Yes, sir.

Q. And many times in this alleged statement of Mr. Ashcraft he denies that robbery had anything to do with it?

A. I would have to read the entire statement.

[fol. 136] Q. On page 8:

"Question: You wanted them to find it because you wanted it to appear as robbery, didn't you?

Answer: No, sir."

That appears in the statement?

A. Yes sir.

Q. On page 9—

A. Just a minute. Down here further, a question by Ezzell, he finally admitted to Ezzell that he did want it to look like a robbery.

Q. Yes, there are three or four places where he said he did not try to make it look like a robbery and one place where he says he did. In other words, he contradicts himself on that?

A. He said he did in one place and in other places he said he didn't.

Q. On page 9:

"Question: The reason that he told you that was because this was a pre-arranged plan between you and the negro?

* Answer: No, I did not know nothing about how he was going to do it?"

That appears in the statement?

A. Yes, sir.

Q. Mr. Becker, you testified the other day that this statement wasn't signed?

A. That's right.

Q. It shows on the caption it was begun at 7:12 A. M.

A. Yes.

[fol. 137] Q. Mr. Becker you say you didn't find in your investigation any evidence of a pin having been pinned to Mrs. Ashcraft's underclothes?

A. That's right.

Q. All you know is what Mr. Ashcraft told you about that?

A. About the pin, yes.

Q. Did you ever talk to Mrs. Rommel about that class of pin?

A. Where does she live?

Q. I don't recall offhand.

A. I talked to so many people I don't recall.

Q. You didn't talk to Mrs. Rommel?

A. I don't have any distinct recollection of talking to her.

Q. If you had talked to her and she had told you that that thing didn't pin into the clothes, but clipped on you would remember that?

A. I think I would. I may have talked to her, but if I did I don't recall it.

Q. If she had talked to you you would have remembered it, wouldn't you?

A. I possibly would have.

Q. You said something about that bag being pinned to her underclothes. - You didn't know it was fastened?

A. No.

Q. You say you never talked to anybody that knew about that, Mr. Becker.

A. No, I say I may have talked to somebody about it. I talked to a lot of people, Mr. McTighe.

Q. You don't remember?

A. I don't recall it at this time.

Q. This alleged statement of Mr. Ashcraft has in the [fol. 138] caption, "7:12 A. M.?"

A. I think that's the time.

Q. The alleged statement of the negro, Ware, bears no time at all on it?

A. I don't believe it does.

Q. Tell us why that is?

A. Mr. Waldauer took that statement. You will have to ask him that.

Q. On the first page of the statement of Ware, this question is asked:

"Q. Did you kill this woman.?" and his answer is:

"A. Me?"

A. That's right.

Q. Did you think he was reluctant about that?

A. No, I didn't think he was reluctant about it.

Q. Does this statement reflect everything that the defendant Ware told you?

A. No, he made a verbal statement before the written statement was taken.

Q. Does the statement contain everything he said that would tend to incriminate or exonerate him.

A. Everything but the oral statement.

Q. But it contains everything that is in your judgment material and important?

A. Yes, sir.

Q. At the time it was taken?

A. In my judgment, yes.

Q. Just look at this statement of Ware's and try to find anything in there about those cigarets you testified that [fol. 139] Ware smoked?

A. I don't know whether that is in here.

Q. Look and tell us whether that is in here.

A. No, sir, that's not contained in the statement, but if I am not mistaken we were told by Ware about the cigarets the Tuesday morning that Mr. Ezzell and I carried him out Mr. Ashcraft's house; if I am not mistaken.

Q. You had those cigarets the night Ware was picked up and taken to jail?

A. Yes, sir.

Q. Did you ask him about those cigarets then?

A. I don't believe I did.

Q. Do you remember whether you did or not?

A. I don't believe I did at that particular time.

Q. Didn't you consider that important, Mr. Becker?

A. We considered everything important. I can forget some things.

Q. You make mistakes, don't you?

A. I am only a human being. Everybody does.

Q. Was this statement taken down in the language of this negro Ware?

A. Everything he said that is in this statement was taken down. What he said is in the statement. Mr. Waldauer just put it down as he said it.

Q. It was in Ware's language?

A. Yes, sir.

Q. On page 2 of Ware's alleged statement, this appears: "He was operating a pile driver". Did he say "operating."

A. I imagine he did if it's in there.

Q. You say you imagine. Did he say it or not?

[fol. 140] A. Mr. McTighe, if you are going to ask me exactly the words he said more than a year ago, I can only say that he made the statement and Mr. Waldauer took it down in shorthand and then transcribed it.

Q. If something appears in this statement, you will say Ware made it?

A. Yes, sir.

Q. If the statement shows he said "operating" you say he said it.

A. If it is in that statement.

Q. Now, on page 11 of Ware's statement, at the bottom of the page:

"Q. Nobody has mistreated you in any way since you have been up here, have they?

A. In no way."

Q. Are those the negro's words: "In no way?"

A. That's what the statement says.

Q. "In no way?"

A. That's what he said.

Q. Mr. Becker, let's skip back to page 4.

A. All right.

Q. This question appears, and answer:

"Q. Go ahead.

A. After the job was done——

Q. Wait a minute. Tell about the day before you did the job, when you met him."

A. That's in there.

Q. Is there anything in that statement, before that, where Ware told you all when he met the defendant Ashcraft?

A. I will have to read the statement and see.

Q. Look and see.

[fol. 141] A. No, sir, but that statement was asked him because of the verbal statement he made before that.

Q. It is your statement that that was made orally to you before this statement was taken?

A. Yes, that's why he was asked the question. The negro had made the statement to us before we took down his statement in writing.

Q. At the time you were taking this statement you were suggesting the answer and what the negro was to say when you asked that question?

A. What?

Q. You were suggesting what you wanted him to tell you at that time?

A. I asked him that question so I would know.

Q. Weren't you suggesting his answers?

A. No, sir.

Q. Let's see what the answer to that question is. This thing was done early Thursday morning?

A. Yes.

Q. This answer is shown on Ware's statement:

"Answer: The day he met me on the street, he taken me on to Oriole Street in his automobile, and he stopped, and he sits down and tell me to hold up my head and don't be looking down-hearted."

He goes on with that answer.

A. That's what he told us.

Q. Look at the next question and answer:

"Question: What drug store did you get out?

"Answer: The colored drug store on Chelsea, and then he came back to my house on Oriole Street the follow- [fol. 142]- night at 8 o'clock sharp."

What night would you say that was?

A. If he says he rode with him Wednesday, then that would be Thursday night, the following night.

Q. If it was Thursday night he rode out—the woman was killed Thursday morning?

A. Early Thursday morning; that would be Wednesday night.

Q. Then he was at whose house at 8 o'clock Wednesday night according to this statement?

A. Mr. Ashcraft's, according to that.

Q. The last answer on page 5:

"Q. You haven't left your house yet. He came to your house in the car."

You asked him that? That's your examination?

A. I imagine it is. Yes, that's it.

Q. You didn't ask him a question there; you told him, "You haven't left your house yet."

A. We asked him before that was the dog barking at Mr. Ashcraft's house.

Q. You didn't ask him how it happened. You were telling him there when it happened?

A. No, sir. That negro had already made an oral statement to us.

Q. His answer is:

"A. Yes, sir: he came there in the car, and I got up and I went out of the back door."

A. Yes sir.

Q. You are familiar with the house where the defendant Ware lived on Oriole?

A. I am familiar with one room.

[fol. 143] Q. And were some negroes living in the next room?

A. I couldn't say because I didn't go in the other room.

Q. What kind of an investigation did you make if you didn't go in but one room?

A. I searched the room where Ware lived.

Q. Did you search the kitchen?

A. I didn't see a kitchen.

Q. Did you look through the house?

A. I did not.

Q. Did you make a search out there for that diamond ring?

A. I looked in his room.

Q. Was that that extent of your search of Ware's house?

A. Yes, other people lived in other parts of the house.

Q. You didn't look to see if there was a back door?

A. No.

Q. So you don't know whether the statement "I went out of the back door" is possible or impossible?

A. I just take what they give me.

Q. No where in this statement is anything said about the denomination of any bills or money—whether tens or fives or ones or silver?

A. I think not.

Q. Just the flat statement that he was to be paid \$100 or \$50 or whatever it was?

A. That's right.

Q. Did you ever ask him the denominations of the bills?

A. I don't believe I did.

Q. And you were trying to find out, in your investigation, if he had spent some money?

A. That's right.

[fol. 144] Q. Isn't it your judgment that you could have found that out more easily if you had known the denominations of the bills that he was supposed to have gotten?

A. I don't know that that makes any great difference. Anybody would take it as long as it was good money.

Q. At any rate, you didn't get any information on that?

A. No.

Q. Did you find any weapons in Ashcraft's house?

A. There was a shot gun.

Q. You found a shot gun and pistol?

A. Yes, and some tools.

Q. In your investigation, and in these purported statements which you have introduced here, there isn't one

thing in there about any weapon this negro had at the time he is alleged to have forced this woman in the car?

A. No, sir.

Q. In other words, no weapon has been found, any gun, that is in any way connects up with the death of this unfortunate woman?

A. No, sir.

Q. And Ware tells you in this statement that he put the woman in the water and threw two rocks at her?

A. Yes, sir.

Q. And turned around and walked away?

A. That's what he told me.

Q. Let's study the scene at the slough. The Raleigh Road runs into Raleigh. I believe that's approximately north and south at that point?

A. Practically north.

Q. That ground out there is rough and rocky and rugged? [fol. 145] A. Yes, sir, I believe there was an old street car that went through there at one time.

Q. Close to the road is a body of water?

A. Just off the road to the left.

Q. That's not the slough the body was found in?

A. Yes, sir.

Q. I mean the first body of water. There are two bodies of water out there?

A. I don't know where the other one is.

Q. Don't you remember that there is a dividing line where the old car line ran across?

A. That all depends on the height of the water. At the time this thing happened that was all one body of water. The water was up high and you could go from one part of it to the other. You could paddle a boat right through those places there.

Q. The body was found past that old car line?

A. I don't know what you mean by "past".

Q. Was it east or west?

A. I think it would be a little northwest of where the old rock levee runs across.

Q. When this negro made this purported statement, did he say how he knew she was dead after he threw these rocks at her?

A. No, sir.

Q. Did you ask how he knew she was dead; that if the woman wasn't dead she might crawl out of there?

A. No, I didn't ask him that.

Q. He said he threw two rocks at her and turned around and walked away?

[fol. 146] A. He said he hit her in the head.

Q. Threw rocks at her?

A. He said he hit her, too.

Q. One place he says he hit her and another place he says he threw them at her. He was holding back on you, wasn't he?

A. I don't know whether he was holding back or not. I had to take what the negro gave me.

Q. You don't know whether he was holding back or not?

A. I wasn't out there.

Q. I am talking about in the jail?

A. I still wasn't out there when the crime was committed. I have to take what they give me.

Q. The last question on page 7:

"Q. How big a rock?

A. I don't know what size it was."

That appears in the statement?

A. Yes, sir.

Q. Did Ware tell you he didn't know what size the rock was?

A. Yes, sir.

Q. After he told you that, later on you took him out there and got some rocks.

A. Yes, sir.

Q. He had already told you he didn't know what size they were?

A. Yes, sir.

Q. And you suggested to him to pick up those rocks?

A. No, we asked him to pick up some rocks about the size he used.

[fol. 147] Q. You told him that?

A. Asked him to do it.

Q. Did you ask him or tell him?

A. Asked him.

Q. Did you say "please"?

A. I said "John, see if you can find some rocks about the size you used."

Q. He was handcuffed and under arrest and charged with murder?

A. Yes, sir.

Q. On page 8, with reference to the money, Ware was asked this question:

"Q. What did you do with the \$50.00?

A. I rolled it up and put it in my pocket.

Q. Where is it now?

A. I spent it."

Does that appear in this statement?

A. Yes, sir.

Q. He told you he didn't know what he had done with it?

A. That's right, said he spent it.

Q. He said something about money he paid the Federal Clothing Company?

A. That's right.

Q. Do you know whether that gentleman from Federal Clothing Company is going to be up here today?

A. I don't know.

Q. As a matter of fact, all the money that Ware spent at Federal Clothing Company was \$2.98?

A. I don't know.

Q. Didn't you investigate that?

[fol. 148] A. No, sir.

Q. Did anybody?

A. Mr. McTighe, there was a lot of work to do and others did some of it.

Q. You were in charge of the investigation, were you not, Mr. Becker?

A. Yes, sir.

Q. I notice in this statement something about Ware owing William Stokes \$15.00.

A. That's right.

Q. Did you try to find William Stokes?

A. I didn't personally.

Q. Did somebody else do that?

A. Yes, sir.

Q. And you never were able to locate William Stokes anywhere?

A. No, sir.

Q. Nobody by that name had done any business with the Abraham Packing Company?

A. I don't know about that.

Q. You all investigated that closely?

A. There was an investigation made and no William Stokes was found.

Q. You knew there wasn't any William Stokes?

A. Couldn't find him.

Q. And if Ware told you that and there was no William Stokes, some of these statements made by Ware in this statement are not so?

A. I don't know.

Q. The only money you could account for that Ware had [fol. 149] spent was this \$2.00 or \$3.00?

A. Yes, but it would be hard to account for money that he might have lost in a crap game.

Q. You are not trying to tell us that he lost this money in a crap game?

A. Only what he says in that statement; that's all. He says he shot craps in West Memphis.

Q. Did you go over to West Memphis and try to find out if this boyd had been over there?

A. No, sir, I did not.

Q. This diamond ring. I am not reading from the statement now, but asking you a question. You say some statements were made about a diamond ring?

A. Yes, sir.

Q. Mrs. Ashcraft was supposed to have a diamond ring?

A. That's what Mr. Ashcraft stated.

Q. Did anybody ever find the diamond ring?

A. No, sir.

Q. What effort did you make to find it?

A. We made practically every effort that could be made to find it.

Q. What efforts were they?

A. We looked around his house—

Q. Yes, sir.

A. —and the pawn shops and asked if there had been such a ring pawned.

Q. Did you look for it at the scene of the crime?

A. Yes, sir.

Q. You have never been able to get any trace of it, in [fol. 150] any way?

A. Never have.

Q. Ware's statement was signed with an "X" mark?

A. Yes, by touching the pen.

Q. Up until the time that the defendant Ware's name was mentioned by Mr. Ashcraft, there hadn't been a finger of suspicion pointing to his guilt?

A. No, sir.

Q. Then you went out to Ware's house and arrested him at 12:00 o'clock at night?

A. We went out and picked him up. He wasn't arrested.

Q. He was handcuffed?

A. No, sir, not at that time.

Q. You men were armed?

A. I was armed.

Q. You say you didn't arrest him?

A. We did not.

Q. You had no warrant and no charges had been placed against him?

A. I don't think there is any law requiring us to have a warrant under those circumstances.

Q. I didn't ask you that. I asked you if you had a warrant?

A. I didn't have a warrant.

Q. He had committed no offense in your presence?

A. No, sir.

Q. He was asleep in bed?

A. Yes, sir.

Q. Now when you picked up Ware, you didn't tell him what you wanted with him—

[fol. 151] A. No, sir.

Q. —on the way down?

A. No.

Q. How long did you question him here in the jail before he said he knew anything about this thing?

A. About five minutes.

Q. About five minutes?

A. Yes, after we got him to the jail.

Q. Are you sure it was just five minutes?

A. No, I'm not sure; I'm just telling you my impression. It was about that long.

Q. Do your impressions change from time to time?

A. I don't think they change.

Q. Could you be mistaken about how long you questioned Ware?

A. Oh, it could have been six or seven minutes, and it could have been ten. It was just a short time, I do know that.

Q. Mr. Becker, you testified in the habeas corpus hearing before Judge Hamner which I filed on behalf of Ware when this thing originally came up?

A. I think I did.

Q. If this record of the habeas corpus hearing reflects that you said you questioned Ware half a hour, would that be correct?

A. If that's in the record, of course it's correct. I wasn't watching the clock.

Q. This record of the habeas corpus hearing has this question:

"Q. What time did you go out there?

A. In the neighborhood of midnight.

[fol. 152] Q. When was that statement given?

A. Right at 2 o'clock."

Q. Did you make that statement?

A. If it's in the record.

Q. Five minutes or thirty minutes or two hours. There's a difference?

A. You say the record shows the statement was made around 2 o'clock and that we picked him up at midnight. We had to bring him in before we could talk to him.

Q. Where was Ware during that two hours? What happened to him?

A. I don't know anything about two hours.

Q. Well, did you make that statement?

The Court: He said if that's in the record he said it.

Q. Now, after Ware was brought in here how long was it before Mr. Henry Waldauer came up?

A. I will say in the neighborhood of 2 o'clock.

Q. How much at variance could you be on that?

A. I am just guessing at it. It could have been at 2:30 or a quarter to three.

Q. Is the reason you say there might be some difference in time because you think I have something written down from the other hearing to contradict you?

A. No, I wasn't watching the clock.

Q. You testified the other day that you stayed with Ware and kept him in your custody, or whatever you call it—I believe you used the word "custody"—from the time you picked him up until he touched the pen to that alleged statement?

[fol. 153] A. Yes, sir, I stayed up there all that time. I also stated that I may have gone to the toilet during that time.

Q. Did you do that?

A. I won't say I did or didn't. That's been a year and a half ago. I can't tell you everything that happened.

Q. Then after Waldauer took this statement down, Mr. Battle and yourself were present while it was being written down in shorthand?

A. Yes, we were there.

Q. And then Mr. Waldauer left and Mr. Battle left and you stayed with Ware?

A. Battle could have gone back in the office.

Q. But you stayed with Ware?

A. Yes, sir.

Q. What time, in your judgment, since you didn't have a clock, what time would you say that Ware touched the pen to that statement?

A. I would say in the neighborhood of six o'clock.

Mr. McTighe: General, do you have that note of Mr. Waldauer's there?

General Gerber: Yes. (Hands Mr. McTighe paper)

Q. How long had Ware been up there altogether when he touched the pen?

A. Well, if he touched it about six o'clock; he had been there from about 1 or 2 o'clock.

Q. About four or five hours?

A. Yes, sir.

[fol. 154] Q. You didn't know Ware could write at that time?

A. No, sir.

Q. And you didn't know that until the last trial when Ware showed us that he could?

A. That's correct.

Q. At the time Ware touched the pen, if you had known he could write, what would you have done?

A. That occasion didn't arise and of course I don't know what I would have done, but he did make his mark.

Q. That negro didn't want to sign that statement, did he, Mr. Becker?

A. He made no indication that he didn't.

Q. You didn't see any indication that he didn't?

A. No, sir.

Q. He just freely and voluntarily touched the pen to the statement?

A. There was no indication on his part that he didn't want to do that.

Q. He was anxious to do what you wanted him to do?

A. He wanted to get it off his shoulders. He wasn't going to take the whole blame.

Q. He was anxious to do what you wanted him to do, wasn't he?

A. I wouldn't say that he was overly anxious. He said he was telling the truth and that's all I could go by—what he said.

Q. Mr. Becker, at the last trial of this case, there wasn't anything said about these cigaret butts being left by Ware in the car?

A. I think there was.

[fol. 155] Q. You think there was?

A. I am sure there was, because I know the cigarets were introduced in evidence.

Q. In the last trial we introduced this automobile cushion here?

A. Yes, sir.

Q. You didn't say at the last trial that these were Ware's footprints?

General Gerber: What was that?

Q. I asked you at the last trial if you were attempting to say they were Ware's footprints, and you said no?

A. I said in my opinion it was made by that shoe.

Q. You are not trying to have the jury believe now that those are Ware's footprints?

A. I am not trying to tell the jury what to believe, Mr. McTighe.

Q. That's a greasy footprint?

A. No, sir.

Q. Did you ever analyze it?

A. No.

Q. Didn't you anticipate that the footprint would become material?

A. Yes.

Q. Why didn't you analyze it?

A. It's mud.

Q. There was no grease on that shoe—

A. No, sir.

Q. —when you got it?

A. No, sir.

Q. Is that a 10 double "E" shoe?

[fol. 156] A. I don't know.

Q. You didn't testify at the other trial that you contended that was Ware's footprint?

A. I think I said, and I say now, that it was my opinion it was made by the left shoe.

Q. When did you get an idea that that shoe made that footprint?

A. When I got Ware's shoes after he was arrested.

Q. When was that shoe taken off of Ware?

A. That Monday morning he was picked up.

Q. Mr. Becker, you are the finger print man and the party who takes finger prints?

A. Yes sir.

Q. And everybody has agreed that this automobile was dusty when you got it.

A. Yes, sir.

Q. And you say you got no clear, legible prints?

A. No, we got only smudges. The car had sat in the dust all day along and the moisture had absorbed it and we couldn't get anything but smudges.

Q. Did you go all over the inside of the car?

A. Practically so.

Q. You didn't find any of Ashcraft's finger prints?

A. Nothing but smudges.

Q. Did you say at the last trial that you didn't take Ware's finger prints?

A. I hadn't then. I took them since.

[fol. 157] Q. Since the last trial?

A. Yes, Ashcraft's and Ware's.

Q. What did Ware tell you about Jab Cook or Jab Walls? Do you remember you brought a negro in here that Ware said was involved in this and when he came in here it developed that he didn't know anything about it?

A. Ware never involved anybody at that time except he and Mr. Ashcraft.

The Court: We will take a recess.

(Recess)

Q. Mr. Becker, before the recess I was asking you about a negro named Jab Walls. Do you ever recall bringing in a negro by that name and confronting the defendant Ware with him?

A. We had a couple of negroes up here that Ware told us could give us some information about him riding in the car with Ashcraft.

Q. You don't recall whether one was named Jab Walls?

A. No, sir.

Q. Wasn't your purpose in bringing Jab Walls up here because Ware said he knew something about the killing?

A. No, sir. Ware told us I believe that some negro worked on this bowling alley job and he had seen Ware passing a certain corner with Ashcraft.

Q. Now, you took Ware out to the scene of this crime the day after this alleged statement?

General Gerber: I don't want to object, your Honor, but that has been over several times.

Mr. McTighe: All right, that's all.

(witness excused)

[fol 158] Dr. J. A. McQuiston being first sworn, testified as follows:

Direct Examination.

By General Gerber:

Q. Please state your name to the Court and Jury?

A. J. E. McQuiston.

Q. What is your profession?

A. I practice medicine.

Q. You have been practicing medicine how long, Doctor?

A. In Memphis since 1914.

Q. Where is your office at this time?

A. 542 North Highland; Memphis.

Q. Did you know a woman by the name of Zelma Ida Ashcraft—

A. Yes, sir.

Q. —in her lifetime?

A. I did.

Q. Do you know the defendant E. E. Ashcraft?

A. I do.

Q. I will ask you to tell the jury whether Mr. and Mrs. Ashcraft were ever your patients?

A. They were.

Q. Did you have occasion to wait on Mrs. Zelma Ida Ashcraft at any time?

A. Yes, sir.

Q. Over what period of time was Mrs. Ashcraft your patient, doctor?

A. I saw Mrs. Ashcraft from time to time over a period of some five years.

Q. Some five years?

A. Yes, sir.

Q. Did you have occasion to wait on Mr. Ashcraft during the last five years?

A. Yes, I did.

[fol. 159] Q. Doctor, I want to ask you if, on the early morning of June 16, 1941, you had occasion to come up here to this building?

A. I did.

Q. Do you remember who called you?

A. It was one of the deputy sheriffs—Mr. Becker or Mr. Key.

Q. Either Mr. Becker or Mr. Key called you—

A. Yes, sir.

Q. —and asked you to come down to this building?

A. Yes, sir.

Q. When you came to this building, where did you go, doctor?

A. I went up to the 5th floor of this building?

Q. Fifth floor?

A. Yes sir.

Q. I will ask you if, after you got to the fifth floor, you had occasion to see the defendant John Ware?

A. I did.

Q. Do you remember where he was at that time?

A. He was in an office, a room that had tables and chairs in it.

Q. Do you remember who else, if anyone, was in there at that time?

A. Yes, Mr. Becker, Mr. Battle and Sheriff Joyner and Mr. Waldauer and Mr. Ezzell.

Q. You remember them being there?

A. Yes, sir.

Q. What happened there at that time with reference to the reading of anything?

A. Mr. Battle had a—we were several of us up there [fol. 160] given copies of a confession and that was read to the defendant Ware.

Q. That was read to Ware?

A. Yes, sir.

Q. I will ask you if you recall whether the defendant Ware could read and write?

A. He stated he couldn't, but he made his mark.

Q. Doctor, did you have a copy of that statement?

A. I did.

Q. I will ask you to tell the jury whether you followed the reading of that statement as it was being read to Ware?

A. Yes, sir, I did.

Q. After the statement was read to Ware, did you make an examination of him? First did you have any conversation with him?

A. I did have a conversation with him.

Q. Tell the jury what happened?

A. After the statement had been read, Ware was requested to remove his clothing and I made an observation of his body and asked him how he had been treated and his response was that he had been treated all right and I didn't see anything abnormal and no evidence of any bruises or any bodily injury of any kind.

Q. You found no bruises and no injuries and nothing abnormal at that time?

A. No, sir.

Q. And you asked him how he had been treated—

A. Yes, sir, and he said all right.

Q. I will ask you if you found anything unusual about his stomach, or if you found any marks of any kind on his stomach?

A. Yes, there was a big spot of a different color.

Q. Were you present when he was asked to sign this statement?

A. Yes, sir.

[fol. 161] Q. Will you tell us what occurred at that time?

A. Mr. Battle asked him if the statement was true and he said "That's what I said," and "That's the way it was." Then he was asked to sign and he stated he couldn't write his name and it was explained to him that he could make his mark, and Mr. Waldauer, a court reporter, assisted him in making his mark and Mr. Waldauer was very considerate of him and wanted to be sure that he understood what it was all about.

Q. Doctor, after that occurred, just state whether you had occasion to see Mr. Ashcraft up there?

A. I did.

Q. Where was Mr. Ashcraft?

A. He was in another room.

Q. Did you see him?

A. Yes, sir.

Q. Did he see you?

A. Yes, sir.

Q. What was done at that time? What was his condition at that time from the standpoint of showing any signs of fatigue?

A. He appeared normal.

Q. He appeared normal?

A. Yes.

Q. I will ask you to state to the jury if he made any complaint to you at that time about his eyes or any other part of his body?

A. He did not.

Q. State to the jury whether his eyes were bloodshot or if he showed signs of not being able to read?

A. He did not.

Q. Doctor, I will ask you if at any time in your presence he made any statement of any kind relative to the murder of his wife?

A. He did.

[fol. 162] Q. Will you tell the jury what he said in your presence at that time?

A. He said —

Mr. Bickers: Just a moment now. At this point I want the record to show that we object to this type of testimony. If counsel is relying on the alleged written confessions, I respectfully submit to the Court that it is not proper or competent for him to seek to introduce by this witness an oral conversation with reference to this matter, or any other matter as far as that is concerned. If the alleged written confession broke down, that is the only purpose of this so-called oral admission. I submit to your Honor that this witness is not the proper person to prove that by; that it is not competent to prove oral confessions where they claim there is a written confession.

General Gerber: I would like to see that law.

The Court: Objection overruled.

Mr. Bickers: Exception.

Q. Would you state to the jury what he said at that time in your presence?

A. Well, sir he said he had not been able to get along with his wife for sometime; that her health had been bad; that he had offered her a property settlement, and that she might go her way and he his way, and he also stated that he offered this colored man, Ware, a sum of money to make away with his wife.

Q. That statement was made to you by the defendant E. E. Ashcraft?

A. It was.

Q. Did anybody force him to make that statement?

A. No, sir, that was entirely voluntary.

Q. Doctor, after you heard that statement made by him, I will ask you whether he was disrobed and you made an examination of him?

[fol. 163] A. Yes, he was disrobed and I made an inspection of his body.

Q. State whether or not you found anything unusual about his body at that time?

A. I did not find anything abnormal.

Q. Did you find any bruises—

A. No, sir.

Q. —or wounds of any kind inflicted upon him?

A. No, sir.

Q. And he was stripped?

A. Yes, sir.

Q. Doctor, did you say there and witness the taking of any written statement later on that morning from the defendant Ashcraft?

A. No, I didn't.

Q. Did you leave soon after that?

A. Yes, sir.

Q. Before you left I will ask you to state to the jury whether you saw any food of any kind brought up there for Mr. Ashcraft?

A. Yes, sir, breakfast was served to him just before I left. He was sitting down at the table in preparation for the starting of his breakfast—pouring his coffee.

Q. Did you leave after that?

A. Yes, sir.

General Gerber: You may take the witness

Cross-examination.

By Mr. Bickers:

Q. Doctor, as I understand it, you had been the family physician of Mr. and Mrs. Ware?

General Gerber: Ashcraft.

Q. I mean Mr. and Mrs. Ashcraft, for many years?

A. Yes, sir.

{fol. 164] Q. They don't owe you anything?

A. No, they don't.

Q. Mrs. Ashcraft was a delicate woman?

A. Yes, sir.

Q. You had occasions a number of times to examine her and prescribe for her?

A. Yes sir.

Q. You on many occasions prescribed different remedies for her nervous condition?

A. I prescribed for that a number of times.

Q. That was her principal trouble,—nervousness?

A. Yes, sir.

Q. She had advised you and Mr. Ashcraft had advised you that she had had a number of operations?

A. Yes, sir.

Q. On the 14th or 16th of June, you were called to the jail by two deputy sheriffs, Becker and Key?

A. Yes.

Q. What time in the morning was that?

A. Perhaps 5 o'clock.

Q. Was it daylight?

A. Yes, sir.

Q. Did they make known to you when they called you up on that occasion what they wanted you to come up here to the jail for?

A. No, sir.

Q. When you got here did anybody tell you to make an examination of Mr. Ashcraft?

A. Yes, make an inspection of his body.

Q. You went I believe you testified with General Battle, Mr. Becker, Mr. Key, Mr. Ezzell and Sheriff Joyner to the fifth floor to make this inspection?

X. Yes, I don't think Mr. Key was with us.

[fol. 165] Q. When you went to the fifth floor to make this inspection of Mr. Ashcraft, he was in a room removed from what is known as the homicide room?

A. He was in a room with table and chairs.

Q. Doctor, at the time you got here, did it occur to you that the county had a county physician capable of making this inspection?

A. Well, I didn't make any issue of that.

Q. You do know there is a county physician?

A. Yes, sir.

General Gerber: We will agree that Dr. Moore is the county physician.

Q. When you went into this room where Mr. Ashcraft was, in the presence of all these people who went along with you, were you shocked or surprised to see him up there?

A. Well, I don't think I felt any great shock?

Q. Had you previously been told what he was up there for, doctor?

A. Not until after I went to the jail. Not until after I arrived at the jail.

Q. After you got to the jail they told you they wanted you to make an inspection of Mr. Ashcraft's body.

A. They asked me to go up to the room where Ware was.

Q. Did anyone in this room volunteer the information to you that he was arrested and had been taken into custody and had been there for 36 hours?

A. No, sir.

Q. No one said anything like that?

A. No, sir.

Q. Why, then, did they want you to make an inspection of Mr. Ashcraft?

[fol. 166] A. I didn't understand why.

Q. Here was a man you had treated for five years and you weren't at all surprised to find him there?

A. I didn't know but what he had asked for me to come up there.

Q. Why, doctor, you just said that Mr. Becker and Mr. Key called you.

Q. He could have requested them to call me.

Q. No one told you downstairs that Mr. Ashcraft had sent for you to come up?

A. No, sir.

Q. You don't so now understand that you were called to the fifth floor in response to a call from Mr. Ashcraft, do you, doctor?

A. No, I do not.

Q. You didn't have the same feeling toward him when you saw him there in the jail as you would have felt if you had been called to his house to attend him as his doctor?

A. I hadn't arrived at any conclusion.

Q. As soon as you walked in the room, what did he say to you?

A. He spoke to me.

Q. Did he say "Howdy do, doctor?"

A. Well, I don't know exactly.

Q. What did you say?

A. I asked him how he was getting along and how he had been treated and he said 'all right.

Q. Why did you ask him how he had been treated, when you just testified that you didn't know what he was in custody for?

A. That was later; after—

Q. I am talking about—

General Gerber: Just a minute.

The Court: Don't interrupt the witness, Mr. Bickers.

[fol. 167] Mr. Bickers: How's that?

The Court: Let him answer the question.

Q. All right. When you first went in the room you say he spoke to you?

A. Yes sir.

Q. And the next thing you asked him was, how they had been treating him?

A. That was later.

Q. What happened after he spoke to you?

A. Well it was more of a sign of recognition and then the others began asking him some questions.

Q. You didn't ask him any?

A. Not at that time.

Q. Who began to ask him questions?

A. Mr. Ezzell and Mr. Becker did most of the questioning.

Q. You say Mr. Ashcraft looked normal?

A. Yes sir.

Q. Didn't he look tired?

A. He looked about as I see him now.

Q. You didn't ask him if he had been up without sleep from 7:30 Saturday night until 5 o'clock Monday morning when you got there?

A. No.

Q. Nobody asked him any such question as that, did they, doctor?

A. No, sir.

Q. You say you asked him various questions?

A. Two, as far as I can recall. I asked him how he had been treated and how he felt. He said all right.

Q. And all of these officers were still there?

A. Yes, sir.

Q. What next did you ask him?

A. I didn't ask him anything else.

[fol. 168] Q. Was this so-called confession handed to you at that time?

A. No, it wasn't.

Q. How long did you stay in the room with him and with these officers?

A. I left the room almost immediately after I made an inspection of his body.

Q. The only things you asked the defendant Ashcraft was how he felt and how he had been treated?

A. Yes, they were practically the substance.

Q. Let's get the record straight. There was the usual salutation and then the only questions you asked him later was how are you feeling and how have they treated you?

A. Yes, sir.

Q. And then you left?

A. Yes, sir.

Q. Did you go back?

A. I did not.

Q. Doctor, I understood you to say on your direct examination something about his statement to you that he had decided to do away with his wife?

A. He didn't make that statement to me in answer to my question.

Q. Oh, he made that statement in answer to a question of Mr. Ezzell or Mr. Key, in your presence?

A. Yes, sir.

Q. Did that surprise you?

A. Well, yes.

Q. You knew how he stood among his neighbors, friends and acquaintances, didn't you?

A. I knew Mr. Ashcraft strictly in a professional way. I saw him in my office and at home.

Q. Had you ever, up until that time, heard *on* derogatory [fol. 169] word against Mr. Ashcraft during the five years you had been in attendance on him?

A. I had not.

Mr. Bickers: That's all.

Cross-examination.

By Mr. McTighe:

Q. Doctor, you first saw the defendant Ware?

A. Yes, sir.

Q. You didn't know Ware then?

A. No, sir.

Q. And then they read this confession to him?

A. Yes, sir.

Q. Who read it?

A. General Battle.

Q. And the negro said he couldn't read and write?

A. Yes, he did.

Q. And he didn't sign that confession?

A. He made his mark.

Q. I believe you told us at the last trial that in making your examination of Ware, you had him stand off a few feet with his feet apart and had him turn around; is that right?

A. I don't know that I made the statement that I had him stand off a few feet. I was within easy inspection distance of him.

Q. Did you walk around him?

A. I would say I had him turn around.

Q. How far were you away from him?

A. Three feet perhaps.

Q. Doctor, you say that from time to time you prescribed for Mrs. Ashcraft?

A. Yes, sir.

Q. And that was mostly for her nervous condition?

[fol. 169-A] A. I had prescribed for her for other ailments but I would say I prescribed for her more often for her nervous condition than the others.

Q. You gave her a blank prescription a few days before this thing occurred, signed by you and made out in blank?

A. Yes, sir.

Q. I am going to read you from the last trial of this case, the last trial, and from your testimony.

A. "Question: Doctor, did you give Mrs. Zelma Ashcraft a blank prescription for the purpose of obtaining some narcotics a day or so prior to her death? Answer: No."

Q. Was that question asked you and did you make that answer, doctor?

A. Yes, I can explain.

Q. You have a right to do that. Was this question asked you at the last trial and did you make this answer:

"Question: Did you give on that day or prior to the day a blank prescription to her through the medium of which she might have obtained amytal? Answer: No. Why should I do that?"

Q. Do you remember making that answer? You said that?

A. Yes, sir.

Q. You told Mr. Rhem you didn't give her any blank prescription and now you say you did?

A. I can explain it.

Q. All of the time Ware was in the room—

A. If you would let me explain that.

The Court: You may do so.

A. Mrs. Ashcraft came to my office a few days—about the time that I have been questioned about. This prescription had a small amount of narcotics in it which we some-[fol. 170] times use in three mixtures. She wanted me to give her a prescription the same as I had given her in the house. I didn't have any record of that prescription and instead of giving her that prescription I signed this blank prescription and requested her to take it to Mr. Hall's Drug Store, who had been filling prescriptions for me for a long time, that she might get the same mixture that she had gotten when she was sick, and that's how the blank prescription was there and when I was questioned on that before when I was up here I didn't recall it, but after talking to the druggist I did.

Q. Let's see if I can understand you correctly on that. You said at the last trial that you didn't give her a blank prescription for narcotics?

A. Yes, sir.

Q. Mr. Hall is the druggist you are talking about?

A. Yes, sir.

Q. And after you talked to Mr. Hall and learned that Mr. Hall had testified that you did give her a blank prescription—

A. No, I asked him about the circumstances, and he refreshed my recollection on it.

Q. Didn't Mr. Hall advise you that he had testified at the last trial that he had a blank prescription you had written for her?

A. He didn't advise me that he had testified; he refreshed my recollection about the prescription.

Mr. McTighe: That's all.

Juror: Had you ever been up on the fifth floor prior to that time?

A. No.

Juror: This was the first time?

A. Yes, sir.

General Gerber: Let me ask you this question: Prior [fol. 171] to this time have you ever been called by the Sheriff's office to the 5th floor of this jail?

A. I have been called in by someone who would be in jail, yes.

General Gerber: Have you ever been called here on a special mission as you were on that early morning?

A. No, sir.

Juror: How did they happen to pick you?

A. I would say because of the fact that they wanted to establish the fact that he had not been mistreated.

(Witness excused.)

[fol. 172] HENRY WALDAUER, the next witness, being duly sworn, testified as follows:

Direct examination.

By General Gerber:

Q. State your name to the court and jury?

A. My name is Henry Waldauer.

Q. Mr. Waldauer, you have lived in Memphis how long?

A. Ever since 1913.

Q. And you are engaged in what business?

A. I am a court reporter.

Q. You have been a court reporter how long?

A. 22 years.

Q. You say you are a court reporter. Will you tell the jury what you do?

A. My duties are to take down verbatim whatever is said in a court room or in a meeting or anywhere my services are called for.

Q. Can you gentlemen all hear him? Mr. Waldauer, in your 22 years as a court reporter, in addition to reporting in court rooms, have you reported before any boards in Washington or elsewhere?

A. Yes, sir, I have served as United States Senate reporter for various committees and the House of Representatives in Washington. I reported the Peace Conference which was held in Washington in 1925 and I have reported several international matters involving the United States Government on the one hand and other Governments on the other.

Q. You have had 22 years of experience as such reporter?

[fol. 173] A. Yes, sir.

Q. Do you hold any office in the Government of the City of Memphis or Shelby County or Tennessee or the United States of America?

A. I do not now and never have.

Q. Never have?

A. No, sir, with the exception of being a notary public which is in connection with my work as reporter.

Q. You are a Notary Public which is in connection with your work.

A. Yes, sir.

Q. Does being a notary public give you authority to swear witnesses?

A. Yes sir.

Q. Mr. Waldauer, state to the jury if you had occasion to come down to this building on the early morning of June 16, 1941?

A. I did if that's the right date. (Examines papers.) Yes, sir.

Q. Will you tell us what happened when you came down here?

A. I was waked from my bed that morning by a telephone call and you, General Gerber, on the other end, asked me to come down as soon as possible.

Q. I called you at that particular time?

A. Yes, sir.

Q. Did you come to this building?

A. Yes, sir, I did.

Q. Can you tell us about what time you came here?

A. I have a memorandum here which I made and by reference to it, I arrived here at 2:10 A. M.

[fol. 174] Q. I will ask you if at any time after 2:10 A. M. you had occasion to take any statement from anyone in this building?

A. Yes, sir.

Q. Who did you take the statement from?

A. The first statement was from John Ware.

Q. Do you see him in the court room now?

A. Yes, sir.

Q. Will you indicate him to the jury?

A. He is in the second row sitting to the left of Mr. McTighe.

Q. Mr. Waldauer, in the taking of that statement, will you tell the jury how it was taken?

A. Yes, sir. We went into a room on the fifth floor of this building in the northwest corner. In the room at that time was Mr. Preston Battle, the First Assistant Attorney General; Mr. George Becker and myself and the defendant Ware. After I started writing shorthand, every word that was said in that room by any person in the room was taken in shorthand by me until the statement was concluded.

Q. In other words, you took every question that was asked and every answer that was made at that particular time by the person asking the question and the person making the answer.

A. Yes, sir, I did.

Q. Will you tell us what time or about what time you started taking the statement of John Ware?

A. At 2:15 A. M.

Q. After you took this statement in shorthand, what did you do with the shorthand?

A. I took my note book and went to the office of the [fol. 175] Sheriff on the main floor of this building and transcribed the statement on the typewriter, making an original and, as I recall, four carbons.

Q. Mr. Waldauer, I will ask you to state to the jury if, during the time that this statement was being taken by you,

the questions being asked and then answered, whether anybody mistreated or abused the defendant Ware?

A. No, sir, they did not.

Q. State to the jury if anybody struck or threatened him in any way?

A. No, sir.

Q. State to the jury if they made him any promise of immunity or held out any hope of reward for making that statement?

A. No, sir.

Q. I hand you statement which has been introduced as exhibit 1 to Mr. Becker's testimony. Look at it and tell us what it is?

A. This is the statement of John Ware that I took on the occasion in question, which has his mark on it where he made his mark to show that he had signed the statement.

Q. Mr. Waldauer, I want to ask you to state to this jury whether any officer in that room made any of the answers as you have transcribed them here and as shown on that statement, other than Ware?

A. No, sir, they did not.

Q. You say you went in the Sheriff's office and transcribed it. Did you go back upstairs?

A. Yes, sir, I did.

Q. What time did you complete the statement and take it [fol. 176] back upstairs?

A. At 5:40 A. M.

Q. And at 5:40 A. M. did you go back in the room where Ware was?

A. Yes, sir.

Q. Will you tell us what was done then?

A. At 5:40 A. M. the same morning, the statement was read to Ware by Assistant Attorney General Battle. At the time the statement was read, there was Robert Ezzell, George Becker, Dr. J. A. McQuiston, Sheriff Joyner and myself.

Q. Now, at that particular time, I will ask you whether anything was said by anybody or any answers made about whether Ware could read and write?

A. Yes, sir, there was.

Q. What was said about that?

A. At the end of the statement, after it had been read over to Ware by General Battle, Ware made this statement: "That is just the way it was." Battle said: "That is what

happened?" Ware said: "That is what happened. That is the way I told it, and that is the way it was." Battle said "Now this gentleman is a notary public, and we want you to sign the statement, and swear to it before him." Ware said: "I don't know how to write. I can make my mark." Battle said: "All right. He will write your name for you, and have you touch the pen."

Q. I will ask you if, at that particular time, anybody in that room sought to force the defendant Ware to sign this statement?

A. No, they did not.

Q. I will ask you whether, in the making of his mark on [fol. 177] that statement, it was made freely and voluntarily by him?

A. It was. I explained to him at the time as a Notary Public that he didn't have to sign it unless he wanted to.

Q. You made that explanation to him?

A. Yes, sir, I did.

Q. I will ask you who it was that put his name on there by a cross mark?

A. I wrote his name and had him touch the pen to the original and the four copies.

Q. Did you watch him make the mark?

A. I did.

Q. After that statement was read back to him and after he touched the pen, I will ask you whether or not you swore him to it?

A. Yes, sir, I did.

General Gerber: I want to introduce that statement as an exhibit to Mr. Waldauer's testimony.

The Court: Let it be marked.

(Exhibit #1—Waldauer—Jury in—received in evidence)

Q. I believe you stated to the jury that you came back up there and about 5:40 this statement was read back to Ware by General Battle?

A. Yes, sir.

Q. Can you tell us about what time it was that he touched the pen?

A. The statement was signed at 6:00 o'clock A. M.

Q. That was Monday, June 16, 1941?

A. Yes, sir.

Q. After that statement was read back to the defendant [fol. 178] Ware by touching the pen, I will ask you whether any examination of his body was made there at that time?

A. Yes, he was asked to take off all his wearing apparel, which he did, and he was examined by Dr. McQuiston.

Q. After that occurred, I will ask you if you had occasion to go anywhere on the 5th floor and see anybody else?

A. Yes, sir, I did.

Q. Where did you go?

A. I went to a little room in the southwest corner of this building on the 5th floor and the defendant Ashcraft was brought in that room.

Q. Who was there at that time?

A. Mr. Battle, Mr. Ezzell, Mr. Becker, Mr. McQuiston, Sheriff Joyner and myself.

Q. Will you tell us what took place in that room at that time, Mr. Waldauer?

A. Yes, sir, we walked in that room. Mr. Ezzell said:

"Has anybody mistreated you since you have been here?"

Mr. Ashcraft: No, that is one thing I can say.

Mr. Ezzell: Since you have been here you have been treated all right, haven't you?

Mr. Ashcraft: Yes, I have been treated all right.

Mr. Ezzell: I want you to take off everything, so the doctor can see you."

At that point, he disrobed and was standing there nude and was examined by Dr. McQuiston.

Q. Did you pay any particular attention to the examination that Dr. McQuiston made of him at that time?

A. No, sir.

[fol. 179] Q. Dr. McQuiston did go over and examine him at that time?

A. Yes, sir.

Q. After that examination by Dr. McQuiston, what was done then?

A. Becker said: "How long have you been planning this thing?"

Ashcraft: I don't know. It has been getting on my nerves for a long time, the way she has been carrying on, but ever since about May.

Becker: In May you planned to get rid of her?

Ashcraft: Yes, sir.

Becker: You planned to get rid of her for what reason?

Ashcraft: I could not get along with her. She was fussy, and I offered to give her the home and the car and half of the money if she would go ahead and let me go my way and her her way, because ever since she had the flu the woman has got to where you could not get along with her at all.

Ezzell: How about your sexual relations?

Ashcraft: Twice a month. She would always be sore.

Ezzell: You desired it more than that?

Ashcraft. I could have taken a whole lot more than that.

Becker: And you offered this negro how much money to kill her?

Mr. Ashcraft: I told him I would — him \$100 to make away with her.

Becker: You told him you would give him \$100 to make away with her?

Ashcraft: Yes, sir.

Becker: And on Wednesday night, when he came to your [fol. 180] house, that was his purpose in coming there?

Ashcraft: That is the only thing I can figure.

Ezzell: That is the only thing you can figure. Didn't you go and get him and bring him there?

Ashcraft: No, sir.

Ezzell: You did not do that?

Ashcraft: No, sir.

Ezzell: But you told him what time she would leave there that morning, didn't you?

Ashcraft: Yes, sir; I told him what time she would leave.

Ezzell: You knew he was in the car when you went out there with the luggage?

Ashcraft: He was standing at the side of the car.

Q. After that colloquy you have just stated, what occurred? What happened then?

A. A tray containing breakfast was brought in and served to Mr. Ashcraft.

Q. Did he have an opportunity to eat breakfast at that time?

A. He did, yes, sir.

Q. And after he had his breakfast on that occasion, what happened then?

A. We later went into the northwest corner of the building, the same room on the 5th floor, where the statement of Ware was taken.

Q. Do I understand that this colloquy occurred in the southwest corner and after he had breakfast he came to the northwest corner?

A. Yes, sir, that is correct.

Q. At that time, state to the jury whether any statement was taken from the defendant Ashcraft?

A. Yes, sir, beginning at 7:10 A. M.

[fol. 181] Q. Mr. Waldauer, I will ask you whether or not questions were asked and answers given at that time?

A. Yes, sir.

Q. I will ask you to state, after you took them down in shorthand, whether you transcribed it on the typewriter?

A. Yes, sir, I did.

Q. I want to show you a statement here and ask you whether that is the transcribed statement made by you in the early morning of Monday, June 16, 1941, in this building of Mr. Ashcraft?

A. Yes, it is.

Q. Mr. Waldauer, I will ask you to state to the jury who made all of the answers that were asked of Mr. Ashcraft and reported in that statement?

A. The defendant Ashcraft did.

Q. I will ask you whether anybody in that room dictated any answer for him?

A. No, sir.

Q. I will ask you whether anybody in that room suggested to either him or Ware any answers that were to be repeated?

A. No, sir.

Q. You took it as the questions were asked?

A. I took every word said in that room by anybody.

Q. By anybody. Mr. Waldauer, will you tell us what time it was that you started taking the statement? You have told us that you had this colloquy in the presence of Dr. McQuiston and afterwards breakfast was eaten. What time after breakfast did you start taking that statement?

A. 7:10 A. M.

[fol. 182] Q. Will you tell us about what time it was that you finished transcribing the statement?

A. I don't have a memorandum of that definitely. The statement was completed at 7:40 and I immediately went to a typewriter and started transcribing, but to tell you definitely what time I finished I can't do that.

Q. Can you tell us what time the statement was read back to Mr. Ashcraft?

A. At 9:30 A. M.

Q. Can you tell us approximately how long it was after you finished transcribing it and the time it was that you started reading it to him?

A. I would say fifteen minutes or half an hour. That is merely an estimate.

Q. Mr. Waldauer, I will ask you if that statement was read back to Mr. Ashcraft, and if so, by whom?

A. The statement was read back by Mr. George Becker.

Q. Who was in the room at the time?

A. Mr. Nelson Castle, Mr. Everett Pidgeon, Mr. George Becker, Attorney General Battle, Mr. Bob Ezzell, Sheriff Joyner and myself.

Q. Is that the same Mr. Nelson Castle who is vice-president of the Manhattan Bank?

A. Yes, sir.

Q. And Mr. Everett Pidgeon is president of the Coca-Cola Bottling Company?

A. Yes, sir.

Q. I will ask you to state to this jury if at any time, after you got up on that floor and while you were taking [fol. 183] the statement of Mr. Ashcraft or while the colloquy went on between him and Dr. McQuiston, if at any time anybody mistreated or abused him in any way?

A. No, sir.

Q. I will ask you whether anybody intimidated or forced him to make any answers to any questions made at that time?

A. No, sir.

Q. I will ask you if any immunity of hope of reward was held out to him for making that statement?

A. No, sir.

Q. State to the jury if he made any complaint of any kind to you or anybody else about any mistreatment that had been administered upon him?

A. No, sir.

Q. State to the jury if he had a copy of the statement at the time it was read back?

A. He did and when it was read back, he followed the reading.

Q. Were his eyes bloodshot or was anything wrong with him?

A. Nothing that I could see.

Q. Mr. Waldauer, after the statement was read back to him, tell us what occurred then?

A. After the statement was read back, he was asked by Mr. Becker to sign the statement before me as a notary public. Mr. Ashcraft said: "I would rather my lawyer would look at it before I signed it.

"Becker: That is all right, but what is in this statement and what you read is the truth?

Ashcraft: If I did not overlook any part of it, which I don't think I did.

[fol. 184] Becker: I am not talking about what you did not put in the statement, but what is in the statement is the truth?

Ashcraft: Yes, sir.

Becker: Who is getting a lawyer for you?

Ashcraft: Mr. Smith.

Castle: What Mr. Becker read is the truth?

Ashcraft: Yes, sir.

Castle: And so far as you know, there is no correction to be made, is that right?

Ashcraft: No, sir; so far as I know.

Castle: Everything he read is the truth, and there is no correction to be made?

Ashcraft: No, sir.

Castle: There is nothing wrong?

Ashcraft: I did not hear nothing or see nothing that is wrong.

Castle: Well, I followed him when he read it, and he read it all right.

Ashcraft: I would rather that my lawyer would read it over.

Sheriff Joyner: But the statement that he read, that was true as read?

Castle: Yes, sir; I asked him that question.

Sheriff Joyner: You all followed it all of the way through?

Castle: Yes, sir."

Q. Mr. Waldauer, I will ask you if he signed the statement?

A. No, sir, he did not.

[fol. 185] Q. I will ask you if, when he said he would rather his lawyer read it before he signed it, anybody tried to force him to sign the statement?

A. No, sir.

Q. I will ask you if anybody sought to practice any violence or intimidation of any kind on him to try to force him to make it?

A. No, sir.

Q. I mean to sign it?

A. No, sir.

Q. After that occurred, state whether you stayed there any further or left?

A. I left soon thereafter.

General Gerber: You may take the witness.

Cross-examination.

By Mr. Bickers:

Q. Mr. Waldauer, did you consider it, when you were called, unusual to be called at 1:30 A. M. to the jail?

A. Yes, sir.

Q. And did you inquire of General Gerber at that time what he wanted with you?

A. General Gerber told me what he did want.

Q. What did he tell you he wanted with you?

A. He told me that he had Ashcraft in jail and he was about to make a statement which he wanted me to take down.

Q. He told you that over the phone?

[fol. 186] A. Yes, sir.

Q. That Ashcraft was about to make a statement and he wanted you to take it down?

A. Right.

Q. And you got there at 2:10?

A. Yes, sir.

Q. When did you take the statement?

A. The formal statement was taken at 7:10 A. M.

Q. I am asking you again: that's when you took his statement at 7:10 Monday morning?

A. The statement consisting of 11 pages, yes, sir.

Q. Now, you took a statement at 7:10, but at 6:00 o'clock, prior to 7:10, you had gone upstairs to his room; is that right?

A. Not his room; it was the room where he was.

Q. He was in it, wasn't he?

A. Sir?

Q. In the jailhouse upstairs, in a cell?

A. Not in a cell but in a room.

Q. Was it a locked door, barred door?

A. No, sir.

Q. Just in a room?

A. Right.

Q. At six o'clock?

A. Yes, sir.

Q. Anybody in there with him?

A. There was no one in there except those whom I have named; no one representing him.

Q. I didn't ask you that. Was there anyone in there with him when you got to the room he occupied?

[fol. 187] A. As I recall—

Q. Answer my question and then explain. Was anybody in the room occupied by E. E. Ashcraft upstairs when you got up there at six o'clock?

A. I don't remember; there were four of us in the room, but the order—

Q. The what?

The Court: Don't interrupt him. Let him finish his answer.

Mr. Bickers: All right.

The Court: And when he gets through you can ask him something else.

Q. Are you through?

A. Yes, sir.

Q. My question is simple.

General Gerber: If your Honor please—

Q. Was anybody in that room when you got there, with Mr. E. E. Ashcraft?

A. I think I said I don't remember.

Q. You went up there with these four officers at that time at 6:00 o'clock that morning?

A. Yes, sir.

Q. They went with you?

A. Yes, sir, I think so.

Q. Then Ashcraft was in the room by himself?

A. It isn't clear in my recollection whether Ashcraft was in there when I walked in: whether he was brought down soon after I went in the room.

[fol.188] Q. You have just told us a moment ago that he was in the room when you went upstairs. Do you now want us to understand that he had been carried some other place and brought into that room after you got there? Is that what you mean?

A. As I recall, we all arrived there within a minute of each other. The four of us went in that room within a minute or two, but whether he was in there when I walked in there I am unable to tell you.

Q. You don't know whether, after you walked in there, somebody brought him in there?

A. No, sir I don't.

Q. He might have been brought in there by one of the deputies after you got in the room with these four men you have mentioned?

A. Might have been.

Q. In other words, you don't undertake to say to this jury where Ashcraft was or what was happening to him from the time you got there at 2:00 o'clock Monday morning until you first saw him at 6:00 o'clock up in that room?

A. No, sir, I do not.

Q. You don't know a thing about that?

A. Not a thing.

Q. I think at 2 o'clock General Gerber told you over the phone he was about to make a confession and he wanted you to take it down?

A. Right.

Q. Did you expect from that statement that this man was ready to talk as soon as you were available?

A. I didn't expect anything because when I walked in the jail I was told I was to take Ware's statement first. [fol.189] That was the first time I had ever heard of Ware.

Q. Who told you that?

A. I think General Gerber did.

Q. Ware was upstairs?

A. Yes, sir.

Q. How long did it take you to take Ware's statement?

A. I don't have a memorandum on that. I would estimate about half an hour.

Q. I believe you told the jury that that business you have testified to is a true and correct copy of all of the ques-

tions and answers and happenings that took place in either of these rooms?

A. You mean every word said by—

Q. Yes.

A. No, I haven't said that.

Q. Then I misunderstood your testimony.—I understood from your answer to General Gerber a moment ago, when you were qualifying, that everything that took place, the answer and questions said in this room, is recorded accurately on that piece of paper?

A. Yes, sir, as to the formal statements of Ware and the formal statement of Ashcraft, every word said by any man in that room was taken down.

Q. Did they say anything to either Ware, before you started to write—say anything to Ware, questioning, interrogating him in any particular, before you started writing, after you got in the room?

A. No, sir, when Ware was in the room I was opening up my note book and Ware was told I was a court reporter [fol. 190] and I was going to take down what he had to say.

Q. Well—

A. I did not take that down. Then Mr. Becker dictated the formal caption that appears on this statement and I started writing then and I continued to write until the end of the statement, at which time Mr. Becker said "That's all".

Q. Let me understand you correctly. As soon as you got in that room, you began to write down the answers of questions propounded to Ware by Mr. Becker?

A. I didn't say that.

Q. Do you say that didn't happen?

A. As soon as the questions were started to be asked I took it down. I didn't take down preliminaries.

Q. What were the preliminaries?

A. The preliminaries were, in effect, this: Mr. Becker said: "Ware, this is a court reporter and he is going to take down every word you say in this room;" or words to that effect. Mr. Becker then dictated the caption which appears on this statement and I started to write and I wrote from that time on.

Q. Mr. Becker dictated that caption on the statement of Ware's?

A. Yes, sir.

Q. It says "You are making this statement freely and voluntarily" and so forth and so on?

A. No, it doesn't say that.

Q. Read it out:

A. "Statement of John Ware, alias Tom Ware, age 20, [fol. 191] residence Oriole Street, works at Mid-South Pipe Company, Memphis, Tennessee, charged with the murder of Mrs. Zelma Ida Ashcraft on Thursday, June 5, 1941, made at the County Jail to Deputy Sheriff George Becker, in the presence of Assistant Attorney General Preston Battle; Henry Waldauer, Court reporter."

Q. That's what it says there?

A. Yes, sir.

Q. That didn't take but a few moments?

A. No, sir.

Q. And immediately after that, you started writing out the questions and answers?

A. Yes, sir.

Q. How long did it take you to do that, in your opinion?

A. That would have to be an estimate.

Q. Well, your estimate?

A. My estimate would be about 20 or 25 minutes.

Q. When you got that done in 20 or 25 minutes, it was about 3 o'clock?

A. Yes, sir.

Q. And the next thing for you to do was to transcribe your notes of this so-called statement?

A. Right.

Q. You went down stairs—left Ware and went downstairs and started transcribing your notes?

A. Right.

Q. At about 3 o'clock?

A. Right.

Q. And you completed transcribing your notes at 6 o'clock; is that right, or 5 o'clock?

A. The statement was read back to Ware at 5:40. [fol. 192] Whether I finished and went immediately up there or not I don't remember.

Q. You do know that you went back up there to see Mr. Ware—I mean Mr. Ashcraft. When you went back up there to see Mr. Ashcraft, you don't recall the setting in that room, so there is no use questioning you about that, but you do know that shortly after you got there, General Battle and Mr. Becker and Mr. Ezzell, and who else?

A. Dr. McQuiston, Sheriff Joyner and myself; Battle, Ezzell Becker, McQuiston, Joyner and Waldauer.

Q. Six of you?

A. Yes, sir.

Q. Was Ashcraft sitting at the time he was interrogated about this business?

A. Yes, sir, he was.

Q. And, as I understand it, he did his talking to you people in the southwest room?

A. Right.

Q. Do you know where Ware was at that time?

A. No, sir, I have no idea.

Q. You were there when Dr. McQuiston came in the room?

A. I don't know.

Q. Or did you go up there together?

A. I don't remember that, Mr. Bickers.

Q. You wouldn't say whether you were in the room when Dr. McQuiston came in or whether he went up with you?

A. No, sir.

Q. You wouldn't undertake to say what was the first word said to Ashcraft when you people got together with [fol. 193] him in that room?

A. As I recall, I couldn't tell you from recollection, but it is this memorandum which refreshes my recollection.

Q. You were not there on the scene?

A. I was there to take down two statements and what I did take down.

Q. What was the first word said to Ashcraft with all six of you men here in that room?

A. According to the memorandum I have Mr. Ezzell is the first one to say anything to him.

Q. Did Dr. McQuiston speak to him when he came in, if he was there when Ashcraft came in?

A. As I recall it, he did.

Q. How is that?

A. As I recall it he did. I was in the act of opening my note book at the time.

Q. Doing what?

A. In the act of opening my book.

Q. And you don't know whether Dr. McQuiston spoke to him or not?

A. He did speak to him.

Q. How long was it, from the time he saluted Ashcraft, before the officers became to question Mr. Ashcraft?

A. Do you mean the statement in the southwest corner or the northwest corner?

Q. Did you take statements from him at more than one place?

A. Yes, sir.

Q. Mr. Ashcraft?

A. Yes, sir.

[fol. 194] Q. How long were you in that room—the first room?

A. Not over five or ten minutes.

Q. And the officers didn't question him during that time?

A. Yes, they did.

Q. What about?

A. The records shows this: when I was in the act of opening my notebook, Dr. McQuiston asked him if anybody had mistreated him and he said he had been treated fine or words to that effect.

Q. What?

A. Treated fine—F-I-N-E.

Q. What caused him to say that?

The Court: He said Dr. McQuiston asked him how he had been treated and he said fine.

A. Then by that time I had my note book open and the first thing I have was Mr. Ezzell said: "Has anybody mistreated you since you have been here?" and Mr. Ashcraft said, "No, that is one thing I can say."

Q. You read that on direct examination.

General Gerber: You asked him.

Mr. Bickers: Maybe he don't understand me.

General Gerber: I don't understand you either.

Mr. Bickers: I said maybe he doesn't.

The Court: Re-phrase your question.

Q. What I want to know, Mr. Waldauer, is what was the gist of the conversation between the officers and Mr. Ashcraft the 10 or 15 minutes you were in there with him [fol. 195] when you first met him in the room? Is all that was said and done what you have read off?

A. No, I haven't finished reading.

Q. What was read on direct examination?

A. Yes, sir.

Q. That's an exhibit to your testimony in this case?

A. Yes, sir.

Q. Why did you leave the room and go to the other room before you completed the taking of what purports to be his statement?

A. After this statement of about two pages was made, Mr. Ashcraft was then served breakfast.

Q. Did what?

A. He ate breakfast in this same room where the two page statement was made. Then, after breakfast had been served, we went back to the room in the northwest corner and took the formal statement that I later transcribed.

Q. Then you never saw Ashcraft when you first got here until 6 o'clock?

A. No, sir I did not.

Q. Mr. Waldauer, did you see Squire Magevney in the office during that morning at any time?

A. No, sir.

Q. Did Dr. McQuiston say anything to Ashcraft at the time he was there and you were there other than what that statement reflects?

A. Except the statement that was made before I had my note book open.

Q. I am going to hand you a paper here—you are familiar with court procedure. Tell me what that is?

General Gerber: Wait a minute. I want to see it.
[fol. 196] Mr. Bickers: This is a warrant.

General Gerber: To save time—

Mr. Bickers: I ain't in any hurry, General. This is a state warrant issued for E. E. Ashcraft, charged with first degree murder, issued the 6th day of June, 1941.

• The Court: 6th day?

Mr. Bickers: 16th day of June, 1941, and signed by George A. Becker. Now on the inside of this warrant the charge is made that E. E. Ashcraft did commit the offense of murder in the first degree by wrongfully, willfully, deliberately, feloniously and premeditatedly and of his malice aforethought kill and murder Zelma Ida Ashcraft. It directs the summoning of Deputy Sheriffs Matteer, Davis, Becker and Key to appear before him on the 16th day of June, at 8:30 A. M.

General Gerber: Do you want to read Ware's?

Mr. Bickers: I don't represent Ware.

Q. That was 9:30 A. M. and this recites that this hearing was at 8:30 A. M. at which time Mr. E. E. Ashcraft plead

not guilty to the charge of first degree murder. Now, you testified that this so-called statement never was submitted to E. E. Ashcraft until 9:30 A. M. Is that right?

A. Yes, sir, that's right.

Q. At 8:30 he had plead not guilty, yet an hour later you six gentlemen went through the formality of asking him to sign this confession of guilt? That's right, isn't it?

A. That's right.

Q. And he refused, didn't he?

A. That's right.

Q. And that thing you have been testifying from, that [fol. 197] *con-* confession, is not signed, is it?

A. No, sir.

Q. Nobody told you in your visitations down here and interviews with this man, that Ashcraft had been here from 7 o'clock Saturday night until 6 o'clock Monday morning?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. If it had been known to you that this man had been incarcerated in that jail house up there on the 5th floor from 7 o'clock Saturday night until 6 o'clock Monday morning, without sleep, without rest, questioned by six or eight different officers, six we will say, would you have taken that statement?

A. If he had told me he was doing it freely and voluntarily I would have.

Q. You have been 23 years as a court reporter?

A. Twenty-two.

Q. When you saw Mr. Ashcraft at 6 o'clock that Monday morning is it your testimony that he looked like he looks now?

A. Yes, sir.

Q. His general demeanor and manner and repose as demonstrated now as he sits in this chair are just like they were on that morning?

A. Mr. Bickers, it was. He was more composed when that statement was given than I was.

Q. What was there about it that decomposed you?

A. Well, a notorious murder had been committed and the fact that I was taking down a confession from a man [fol. 198] who was the husband of the deceased would have its effect on me.

Q. It didn't discompose you so much that you wouldn't make inquiry of the man if he was making it freely and

voluntarily and without hope of reward, and if he had been interrogated in that room for 36 hours?

A. I didn't know he had been there 36 hours.

Q. You didn't ask, did you?

A. No, sir.

Q. He didn't look sleepy or tired at all?

A. No, sir.

Mr. Bickers: That's all.

Cross-examination.

By Mr. McTighe:

Q. You got to the jail at 2:10 A. M. and started taking Ware's statement at 2:15?

A. Yes, sir.

Q. You don't know how long he had been there when you got there?

A. No, sir.

Q. Or what may have been said or done to him before you got there?

A. No, sir.

Q. During the entire taking of that statement the only people present in that room was yourself, apart from Mr. Battle and Mr. Becker? At that time there was nobody present representing Ware?

A. No, sir.

Q. And he was in jail at 2:15 with four officers and yourself?

[fol. 199] A. No, sir, two officers and myself. Mr. Battle and Mr. Becker.

Q. Was this said to him: "John, tell this in your own words?"

A. The statement speaks for itself. That particular question was not asked.

Q. They started asking him questions which suggested answers?

A. That's a matter of opinion. The statement is here.

Q. Now I believe Ware's statement is possibly 12 pages long?

A. Yes, sir.

Q. It took you about 20 or 30 minutes to take the statement down in shorthand?

A. That's an estimate.

Q. You are pretty fast on the typewriter, aren't you?

A. Ordinarily I am but at this time I had a typewriter absolutely new to me. I was writing on an Underwood rather than on the make I use and I didn't go very fast.

Q. You have used all kinds of typewriters?

A. When I had to.

Q. About how long did it take you to write this statement of Ware's up?

A. My estimate would be about an hour and a half.

Q. About what time did you say you got through writing it up on that typewriter?

A. I have no memo as to how long it took to take Ware's statement. It started at 2:15. If it took half an hour to take it that would be 2:45 and an hour and a half to write it up, that would be 4:15, and that's merely an estimate on [fol. 200] my part.

Q. According to your statement a moment ago it was 5:40 before you went back upstairs and took this paper writing in where Ware was?

A. Yes, and that is definite right.

Q. And I believe you say you had breakfast?

A. Yes, sir.

Q. You don't know what was happening to Ware while you were eating breakfast?

A. No, I wasn't there.

Q. Do you know who was with him during that time?

A. I have no idea.

Q. Who was with him when he came—when you came back with this statement?

A. He came into the room where we were.

Q. Did you see where he came from?

A. No, sir. I know for sometime he was sitting in the rotunda outside of this little room in the northwest corner.

Q. All that place is locked up?

A. Yes, sir.

Q. Mr. Waldauer, you didn't know whether the negro could read or not?

A. No, sir.

Q. Who asked him if he could read and write?

A. Mr. Battle said: "Now this gentleman is a notary public, and we want you to sign the statement, and swear to it before him." Ware said, "I don't know how to write. I can make my mark."

Q. Mr. Waldauer I notice in this statement, Ware was [fol. 201] asked the question: "Did you kill Mrs. Ashcraft?" and his answer is, "me?" Is that what he said?

A. That's right.

Q. He was a little reluctant at that time? He was holding back a little bit?

A. He wasn't holding back on me.

Q. Was he holding back on George Becker?

A. I don't know. The statement speaks for itself.

Q. What did you think when he said "me"? Did you think he was holding back?

A. No, sir, because I have heard any number of negroes, instead of using the word "sir" use the pronoun "me".

Q. Now, you say this statement was taken down in the exact words that Ware used?

A. Yes, sir.

Q. Did he use the word "operating" in the answer "he was operating the pile driver?"

A. Yes, sir.

Q. He said that?

A. Yes, sir.

Q. On Page 11 you will find this question and answer:

"Q. Nobody has mistreated you in any way since you have been up here, have they?

A. In no way."

Q. Did the negro say that?

A. Yes, sir.

Q. He said "In no way"?

A. Yes, sir.

Q. At the last trial you testified that you had lost your notes taken at the jail from which these alleged confessions [fol. 202] were written?

A. Yes, sir.

Q. You had lost your notebook?

A. Yes, sir.

Q. That is, your shorthand notes had been misplaced or lost?

A. Yes, sir.

Q. You testified further at the last trial that that was the first time that had happened to you in 22 years?

A. No, I didn't make that statement. I said it was unusual to lose a notebook. I further said that due to the circumstances at the time, the excitement attendant upon the taking of the statement at that time, and the fact that the statements themselves had been read over to Ware and Ashcraft and the statement had been verified as being cor-

rect by those two defendants, that the original shorthand notes had been lost, but I didn't say that in my 22 years of reporting that was the first time I had ever lost a note book.

Q. If you didn't say that you didn't say it.

A. The record of the last trial shows that, but that record is written in narrative form and I have checked with the court reporter and he I am sure will back me up in my statement that the notes don't show that I made the statement at that time that this was the first time I ever lost any notes.

Q. But you did misplace those notes?

A. Yes, sir.

Q. And you knew these men were going on trial for their [fol. 203] lives?

A. Yes, sir.

Q. Where did you take that shorthand book with those shorthand notes?

A. After the transcription was read over to them, I didn't think the notes were so important, because the defendants had verified the transcript, and not my notes.

Q. Didn't you anticipate that the question might be asked you as to what else happened, and that you might have referred to your shorthand notes to see if there was any discrepancy in that statement? Did you anticipate that?

A. No, I didn't. It never dawned on me that either statement would be denied.

Q. You know now they have been?

A. Yes, sir.

Q. Did you ever find those notes, Mr. Waldauer?

A. No, sir.

Q. Did you ever tell anybody you found them?

A. No, I didn't.

Mr. McTighe: I don't think I want to ask you anything else.

Recross-examination.

By Mr. Bickers:

Q. About those shorthand notes, you understand, Mr. Waldauer that in your experience of 22 years as a court reporter, that it is essential and necessary to keep your [fol. 204] notes of evidence in a case because there may be

need for shorthand notes to be transcribed in connection with motion for a new trial or something like that?

A. Yes, sir.

Q. Now I understand your testimony to be that the notes you took that reflect everything that happened in these rooms that early morning are not now available?

A. That's right, but the transcript is.

Q. You transcribed your notes then lost your notebook?

A. Yes, sir.

Q. And do I understand your testimony to be now that even though you say this was a murder case, and it upset you, you didn't *reasure* these notes in a case where two men's lives are at stake?

A. Mr. Bickers, I am a human being and I lost the notes. I may say this: I came up here immediately from my home. I didn't bring my regular reporter's note book with me. We all use about the same size notebook. The note book furnished me by the attorney general's office would not fit in my filing cabinet, and that may account for the fact that the notes were misplaced.

Q. That your explanation?

A. Yes, sir.

Mr. Bickers: Thats all.

Redirect examination.

By General Gerber:

[fol. 205] Q. You have testified to the jury that *when* you have here is a correct transcript of what you took on that occasion?

A. Yes, sir.

General Gerber: Thats all.

The Court: You may step down.

(Witness excused)

General Gerber: I don't recall whether I offered this statement as an exhibit to Mr. Waldauer's testimony. If not, I want it introduced.

The Court: All right.

(Exhibit #2—Waldauer—Jury in—received in evidence.)

S. N. CASTLE, Being duly sworn testified as follows:

Direct examination.

By General Gerber:

Q. Please state your name to the court and jury?

A. S. N. Castle.

Q. You have lived in Memphis how long?

A. All my life.

Q. In what business are you engaged?

A. Banking business.

Q. How long have you been in the banking business?

A. About 26 years.

Q. And you are connected with what bank at the present time and what is your position?

A. I am vice-president of the Manhattan Branch of the [fol. 206] Union Planters National Bank and Trust Company.

Q. That bank is located where with reference to this building?

A. It is on the northeast corner of Second and Madison, about five blocks from here.

Q. If you left here to go to that bank, you would go down Second Street to Adams, thence to Jefferson, Court and then to Madison?

A. Yes, sir.

Q. Mr. Castle state to the jury if you had occasion to come down to this building on the early morning of June 16, 1941?

A. Yes, I did.

Q. Do you remember who called you to come down here?

A. Yes, sir, Mr. Frank Gianotti.

Q. That's the Frank Gianotti who was at that time Assistant Attorney General?

A. Yes, sir.

Q. When you came to this building where did you go?

A. I was taken to a room on the 5th floor of this building.

Q. I will ask you if at any time you had occasion to see the defendant E. E. Ashcraft?

A. Yes, I did.

Q. I will ask you to state to the jury what his physical condition was at that time if you recall with reference to whether he looked tired or sleepy or whether his eyes were bloodshot or what his condition was?

[fol. 207] A. His physical condition to me looked very good. There was no evidence about his eyes or otherwise to show any tiredness.

Q. I will ask you if at that time you had occasion to hear a statement read to him by anyone?

A. Yes, sir, deputy sheriff Becker read the statement.

Q. I will ask you to state to the jury whether you had a copy of that statement?

A. Yes, sir.

Q. Did Mr. Ashcraft have a copy?

A. Yes, sir.

Q. I will show you a statement and ask you to look at it and tell us if you recall that as being the statement?

A. Yes, sir that is the statement.

Q. That statement has already been introduced as exhibit #2 to Mr. Waldauer's testimony. I will ask you if, after the statement was read, any conversation occurred there in the presence of Mr. Ashcraft with reference to the signing of it?

A. Yes, when deputy sheriff Becker finished reading the statement he asked Mr. Ashcraft if that was correct and he said it was. So he handed it to him and asked him to sign it. Mr. Ashcraft said he would rather not sign it until his attorney had read it.

Q. I will ask you if any time either Mr. Becker or anybody undertook to coerce or force Mr. Ashcraft into signing that statement?

A. None whatever.

Q. I will ask you whether you had any words with Mr. [fol. 208] Ashcraft at that time?

A. Yes, I did. When Mr. Ashcraft acknowledged the confession to be correct and yet he didn't want to sign it, I, being one of the witnesses, asked him if the confession as read was entirely correct and he said it was. I asked him if there were any additions or deletions to the statement and he said no, that was entirely correct, but he would rather not sign it until his lawyer had read it.

General Gerber: You may take the witness.

Cross examination.

By Mr. Bickers:

Q. When Mr. Gianotti called you, did he tell you what he wanted?

A. No. He asked me if I could come down here, that he had a matter of importance to see me about. I was informed as to what he wanted when I got here.

Q. You are vice-president of the Manhattan Bank?

A. Yes, sir.

Q. And it is necessary that you stay in the bank and attending to your banking business unless it is very urgent that you leave?

A. Yes, sir.

Q. When you were called down to the jailhouse what time was it?

A. I should judge about 9:30 in the morning.

Q. Didn't it occur to you to ask Mr. Gianotti what he [fol. 209] wanted with you?

A. I get calls of that kind frequently, from customers of the bank or others, asking if I can come somewhere and discuss a matter of importance.

Q. This call never aroused any particular interest in your mind at all?

A. Well, perhaps it aroused some.

Q. You were wondering on your way down here?

A. Probably so.

Q. Now when you got here, how did you get to the fifth floor of this building?

A. Used the elevator.

Q. Who was in the room with Ashcraft when you got there where he was in custody?

A. There was sheriff Joyner, deputy sheriff Becker, Bob Ezzell, General Battle, Mr. Everett Pidgeon, Henry Waldauer and myself.

Q. And the first thing they did was to pass out to you all copies of this paper that you have identified here?

A. That was one of the first things.

Q. That was the first time you had ever seen Mr. Ashcraft?

A. Yes, sir.

Q. Did they say "This is E. E. Ashcraft who has confessed to the killing of his wife?"

A. I don't know that those were the words. I was introduced to him as Mr. Ashcraft.

Q. Did anybody, after introducing you to Mr. Ashcraft, say "this is Mr. Ashcraft's confession."?

[fol. 210] A. That in substance. I think probably Mr.

Q. Then what was the necessity of your being there if that was his confession? Were you there to witness his signature?

A. No, I don't think I was.

Q. You came here to witness his admission of this confession?

A. That's probably right.

Q. Why did you have to read it to him if he had it before him with a place for the Notary Public to sign?

A. I didn't read it to him.

Q. Why did Becker read it to him?

A. I am not conversant with the procedure of criminal courts toward defendants. I presumed that was the proper thing to do and I saw nothing to excite my suspicion because a confession was read back to anyone.

Q. Now, Mr. Castle, did anybody tell you when you were up there at about 9:30 that morning that this man at 8:30 that same morning had plead not guilty to this charge?

A. No.

Q. Did you see Squire Magevney here?

A. No, sir.

Q. You know him?

A. Yes, quite well.

Q. You didn't know then that a warrant had been issued for his arrest and that he had plead not guilty at 8:30, an hour before you were called to come up and witness this [fol 211] so-called oral confession?

A. No, I didn't.

Q. Did anybody in the building at that time tell you that they had had him in custody 36 hours?

A. I knew he had been in custody; how long I didn't know.

Q. Where did you hear that?

A. In this building.

Q. Who told you that?

A. I don't know.

Q. You don't remember.

A. No, I didn't attempt to remember little details.

Q. You didn't consider that was important where a man's life was involved, did you? Did you take this seriously?

A. Yes, sir, I did. I took it very seriously.

Mr. Bickers: That's all.

Cross-examination.

By Mr. McTighe:

Q. Mr. Castle, I believe you testified at the last trial that you didn't talk to Ware and didn't see him?

A. I saw him. He was pointed out to me in the hall.

Q. He was just pointed out to you?

A. Yes, sir.

Q. You have been in the banking business a long time. Let me ask you, as a practical matter, if a man comes into your bank and has a check and you knew he could write his name, would you let him sign his name with an "X"?

A. No.

Q. I am going to hand you a check here. It is made [fol. 212] payable to the order of Tom Ware. Look on the back of that check and see if that's a legible signature?

A. (Examines check) Yes, that's very legible. However, reading it a little further, I see two Tom Ware's written. The one above is very plain. The one below is not.

Q. I hand you another check. See if you can identify the signature on the back as Tom Ware?

A. Well, if I was told he was Tom Ware, perhaps.

Q. Your bank is a branch of the UP?

A. Yes, sir.

Q. And your bank cashed those checks with that endorsement?

A. That may be.

Q. It shows that?

A. If I knew Tom Ware, I would perhaps know that was the name.

Q. On one of the checks the name is very legible?

A. Evidently the same man didn't write both. They don't appear similar.

Mr. McTighe: That's all.

(Witness excused.)

BOB EZZELL, being first sworn testified as follows:

Direct examination.

By General Gerber:

Q. State your name to the Court and Jury?

A. Bob Ezzell.

Q. You are connected with the attorney general's office [fol. 213] at this time?

A. Yes, sir.

Q. I will ask you if you were connected with the attorney general's office on June 5, 1941?

A. Yes, sir.

Q. I will ask you if you had occasion to participate in the investigation of the death of a woman found in a slough out in the vicinity of Raleigh on the early morning of June 5, 1941?

A. Yes, sir, I did.

Q. Will you please tell the jury whether you were in the building on Saturday June 14, 1941?

A. Yes, sir.

Q. I will ask you if at any time that night you had occasion to talk to the defendant in this case, E. E. Ashcraft?

A. No that night, no sir.

Q. When did you talk to Mr. Ashcraft?

A. I talked to Mr. Ashcraft around 3 o'clock Sunday morning.

Q. How long did you talk to him at that time?

A. I talked to Mr. Ashcraft from 3 o'clock Sunday morning until sometime between 6 and 7 o'clock Sunday morning.

Q. I will ask you if, during that period of time, anyone abused him in any way.

A. No, sir.

Q. Did you yourself try to abuse him in any way?

A. No, sir.

Q. I will ask you if, during that period of time, you made him any promise of any kind or held out any hope of reward if he made a statement to you about the commission of this crime.

A. No, sir.

[fol. 214] Q. I will ask you if during that period of time he was fed?

A. Yes, sir, between 5:30 and 6 o'clock Mr. Ashcraft was served buttered toast and a pot of coffee.

Q. Why was he served buttered toast and coffee?

A. I asked him if he wanted breakfast and he said all he wanted was buttered toast and coffee.

Q. How long did you stay with him that Sunday morning?

A. Between 6 and 7 o'clock I left.

Q. Prior to the time you started talking with him at 3 o'clock, I will ask you whether you had any conversation with Mr. Becker or any other deputy there?

A. Yes, sir.

Q. When you left there Sunday morning, did you talk to Mr. Ashcraft after that?

A. Yes, sir.

Q. Tell the jury when you talked to him again?

A. I talked to Mr. Ashcraft again at between 12 and 1 o'clock Sunday afternoon.

Q. How long did you talk to him?

A. Until between 5 and 6 o'clock Sunday night.

Q. During that period of time did you mistreat or abuse him in any way?

A. No, sir.

Q. Did you curse him?

A. No, sir.

Q. You say you talked to him until 5 or 6 Sunday evening?
[fol. 215] A. Yes, sir.

Q. When did you see him again?

A. Around 11 o'clock Sunday night.

Q. And how did you happen to see him then?

A. Mr. Becker called me down in the jail and said that Mr. Ashcraft would like to see me.

Q. Did you go in and talk to him at that time?

A. Yes, sir.

Q. What was the conversation you had with him at that time?

A. Mr. Ashcraft at that time said "Mr. Ezzell, I want to tell the truth about it." He said "A negro killed my wife." I said, "Mr. Ashcraft, do you know what the negro's name is," and he said "Yes, it is Tom Ware." I said "Mr. Ashcraft, where does this negro live?" He said "I don't know exactly, but I can point it out to you." I said "Why haven't you told some of us before now? Your wife has been dead about 10 days." He said at that time that he was scared of the negro and scared the negro would burn his house down.

Q. Mr. Ezzell, after that statement was made to you by Mr. Ashcraft, will you state to the jury what you did then?

A. I then called Mr. Becker in. He was sitting in the lobby and Mr. Ashcraft related to him the story he had told me.

Q. After that occurred tell the jury whether you went anywhere with Mr. Ashcraft?

A. Yes, sir, we put Mr. Ashcraft in a car and with Jayroe, Becker and myself and Mr. Battle, went out Chelsea Avenue to a street—he told us to turn down that street. It was the corner of Chelsea and Sunset. He told us to turn north. We turned down Sunset and Mr. Ashcraft said that [fol. 216] was the wrong street. He directed us and we went to Oriole and he pointed out this house to us. We went up to the door of the house and — negro man answered the door and we asked him what his name was and he said George Pryor. He said he worked at Hartwell Brothers Handle Factory and we asked him if he knew where Tom Ware lived. His wife spoke up and said "There is a John Ware that lives next door."

Q. While you were in Pryor's house, was Mr. Ashcraft brought up there?

A. Yes, sir, and he looked at George Pryor and said that wasn't the negro.

Q. And after that occurred, did you say Pryor's wife said there was a Ware—

A. Yes, sir, she said a negro named John Ware lived next door. At that time Becker and myself and Jayroe went next door and Mr. Ashcraft was brought in and pointed out a negro and said that was the boy.

Q. Who did Mr. Ashcraft point out at that time?

A. John Ware, the defendant here.

Q. After John Ware was pointed out what was done?

A. Ware was taken and put in the car. I was sitting in the back seat in the middle with Ashcraft on one side and Ware on the other side.

Q. I will ask you if at any time when Ware was picked up there on Oriole Street and placed in the car, if anybody struck him or whether he was abused or mistreated in any way?

A. No, sir.

[fol. 217] Q. You say he was brought here?

A. Brought to the jail and carried to the homicide office on the 5th floor.

Q. From the time you left Ware's house until you got to the homicide office, was there any conversation between Ware and Ashcraft?

A. No, sir.

Q. During that time was Ware asked any questions about this particular matter?

A. No, sir.

Q. When you got to the jail you went to the homicide office on the 5th floor?

A. Yes, sir.

Q. What occurred then?

A. Ware and Ashcraft were confronted with each other. Ware was asked if he knew this man, and he said "That's Mr. Johnny Ashcraft." He said he worked on the bowling alley job with him. We asked him how long he had known Mr. Ashcraft and he said he had been riding to and from work with him in a car. He was asked when the last time he rode to work with him and the negro stopped to think, and about that time Mr. Ashcraft spoke up and said "Don't you know, Ware, it was last Thursday, June 5th." At that time I carried Ashcraft out of the room and carried him to the theft squad office. The negro said "I told Mr. Johnny if anything ever come of this I was not going to take the blame."

Q. Did he make that statement in the presence of Mr. Ashcraft?

A. Yes, sir.

[fol. 218] Q. Ashcraft was taken to the theft squad office?

A. Yes, sir.

Q. Did you stay in there with him or not?

A. I stayed there a while and then I came back over to the homicide office.

Q. I will ask you if at any time during that particular night Ware made any statement with reference to his complicity in the murder of Zelma Ida Ashcraft?

A. When I came back to the homicide office he was making a written statement.

Q. Had you been away from there for sometime?

A. Yes, sir.

Q. When you left Mr. Ashcraft there in the theft squad office, who was with him?

A. Mr. Jayroe.

Q. The written statement of Ware was in progress when you got to the homicide office?

A. Yes, sir.

Q. I will ask you whether you were there at the time that the transcript of what had occurred in that room was read back to the defendant Ware?

A. Yes, sir. I was.

Q. Who took the transcript?

A. Mr. Waldauer.

Q. At the time this statement was read back to Ware, were you in the room?

[fol. 219] A. Yes, sir.

Q. At any time while you were present I will ask you if Ware was beaten or abused or cursed or mistreated in any way?

A. No, sir.

Q. After that statement was read back to Ware what happened?

A. He was asked to sign it and he said he couldn't write his name. Henry Waldauer wrote his name for him and Ware touched the pen. He was asked if it was true and Ware said it was.

Q. I will ask you if after that any examination was made by Dr. McQuiston?

A. Of Ware, yes, sir.

Q. After that where did you go?

A. We went in the theft squad room, Dr. McQuiston, myself, Sheriff Joyner, Mr. Becker, Mr. Battle and Waldauer.

Q. At that time were any questions asked Mr. Ashcraft in the presence of everybody else?

A. Yes, sir, I asked him if he had been mistreated and he said no. He was then asked to remove his clothes. Dr. McQuiston examined him. Mr. Becker asked him how long he had been planning this murder. He said that since May, his wife had had the flu and he had told her he would give her the car and half the money and the house if she would go her way and let him go his way.

Q. After that occurred did Dr. McQuiston remain there?

A. No, sir, he left.

[fol. 220] Q. Was any food served to Ashcraft that morning?

A. Hot cakes, bacon and eggs and coffee.

Q. At any time that morning state to the jury if any statement was taken from the defendant Ashcraft about this matter?

A. Yes, sir, there was.

Q. Who took the statement?

A. Waldauer.

Q. The statement was taken in what way?

A. In shorthand and transcribed.

Q. After the statement was transcribed what occurred?

A. After the statement was transcribed Mr. Nelson Castle and Mr. Everett Pidgeon, Sheriff Joyner and myself and Mr. Becker and Mr. Battle were there and Mr. Becker read the statement back to Mr. Ashcraft. Each one of us had a copy and followed the reading and Mr. Ashcraft said it was true and was asked to sign it and said he would rather his lawyer saw it before he signed it.

Q. At the time Mr. Ashcraft made that statement state whether he was threatened or abused or cursed or intimidated?

A. No, sir.

Q. Were any promises of immunity held out to him?

A. No, sir.

Q. When he made known to you gentlemen that he wanted to see a lawyer, was any attempt made to force him to sign that statement?

A. No, sir, there wasn't.

[fol. 221] Q. Mr. Ezzell, did you have any further connection with the investigation after that?

A. No, sir, I went home to get some rest.

Q. After that did you have anything further to do with the investigation?

A. Yes, sir; the following morning Mr. Becker and myself took the defendant Ware to the scene of the crime and to Mr. Ashcraft's house and he re-enacted the whole crime to us.

Q. Did you have any further connection with it after that?

A. No, sir.

General Gerber: You may take the witness.

Cross-examination.

By Mr. Bickers:

Q. Mr. Ezzell, you said you went home to get some rest?

A. Yes, sir.

Q. You were tired?

A. Yes, sir I was tired.

Q. Were you here in the jail when they brought Mr. Ashcraft in Saturday night?

A. Yes, sir, I was in the jail.

Q. Did you go up there with him?

A. No, sir, not at that time.

Q. Did you know why they were bringing him in?

A. No, sir, not at that time.

Q. Did you help the sheriff's office during that period of [fol. 222] the 10 days investigation of this crime?

A. I assisted in the investigation.

Q. And during that time you haven't found any evidence at all that justified you in swearing out a warrant?

A. At that particular time there were some discrepancies in Mr. Ashcraft's statement, his story.

Q. Do you know whether or not the discrepancies that you now refer to were the things that caused them to bring him up here?

A. I couldn't say about that.

Q. Did you confer with the other officers from time to time as to what progress was being made and what evidence they were getting as to who committed the crime?

A. Yes, sir, I conferred.

Q. And when Mr. Ashcraft went to that place on the 5th floor, so far as you know, there wasn't anything that pointed to his guilt?

A. Except the discrepancies.

Q. What discrepancies, Mr. Ezzell?

A. Well, about the amylal tablets and the radiator of his car and the pin which he said was pinned to his wife's slip.

Q. What did he say about the amylal tablets that led you to believe that he killed her?

A. That didn't lead me to believe that.

Q. What did he say about it?

A. He told us one time she took them the night before and another time that she took them the morning before she left.

Q. He told you she always had a bag around her neck in [fol. 223] which she carried her money?

A. Yes, sir, he said—

Q. The discrepancy there was that you didn't find the money when the body was examined at the undertaker's?

A. He said it was pinned to her slip and we found no signs of a chamois bag, and—

Q. You are testifying of your own knowledge?

The Court: Mr. Bickers, you have a bad habit of interrupting witnesses.

Mr. Bickers: I will try to reform, beginning right now.

Q. Now, did you pick up Miss Leah Barnsfind?

A. I didn't pick her up myself.

Q. How long was she talked to on the 5th floor?

A. Some time.

Q. Some hours?

A. Yes, sir.

Q. Would you say as much as five hours?

A. I just don't know. I talked to her a good while.

Q. About this case?

A. Yes, sir.

Q. During your investigation, somebody had told you that Miss Barnsfind visited Mr. Ashcraft and Mrs. Ashcraft in their home frequently?

A. After her death.

Q. And prior to Mrs. Ashcraft's death?

A. I didn't know anything about that.

Q. Mr. Ezzell, you can't tell of course whether Mr. [fol. 224] Ashcraft had slept from 7 o'clock until 3 o'clock, but did he look like he had been asleep?

A. I can't say.

Q. Now when you were talking to him, what did you talk about?

A. About his domestic life and about his prior marriages and the discrepancies in his story.

Q. About the chamois bag and the automobile and the amytal?

A. Yes, sir.

Q. Mr. Ezzell, did Mr. Ashcraft protest his innocence of this crime all of the time you talked to him?

A. He said he didn't do it.

Q. At 6:00 or 6:30, if he said he didn't do it, you were the county detective, why didn't you say "all we can do is swear out a warrant for you?"

A. Mr. Becker was handling the investigation and I was just assisting him.

Q. Do you mean to tell this jury that because he was handling this investigation, if he had seen fit to examine this man on and on, you would have kept on with it?

A. I don't know.

Q. You had no intention of stopping your examination of this man as long as Mr. Becker thought it was advantageous?

A. Whatever Mr. Becker said was all right with me.

Q. Did Mr. Ashcraft sleep any from 3:00 o'clock Sunday morning until you left there between 6 and 6:30?

A. No, sir.

Q. During the time you were talking to Mr. Ashcraft, was he given any rest periods?

[fol. 225] A. Yes, he had five or ten minutes rest when I was talking to him.

Q. Did you make known to the other officers that while you were talking to Mr. Ashcraft he had denied that he had anything to do with this crime?

A. Yes, I told them what he said.

Q. Did Mr. Becker then say, "We will continue to question and cross-question him."

A. No, sir, he didn't say that to me.

Q. He didn't say anything like that?

A. No, sir.

Q. As I understand it now, Mr. Ezzell, you took over at about 11:00 o'clock Sunday night?

A. He called for me.

Q. You were here?

A. I hadn't left the building.

Q. Why were you staying here so close if you were tired?

A. I went down in the jail dormitory and rested.

Q. And about 11:00 o'clock you went in the room at the request of Mr. Ashcraft?

A. Yes, sir.

Q. Was he sitting in the same place?

A. Yes, sir.

Q. And you say he told you he knew who killed his wife?

A. Said a negro killed her.

Q. Did he say why the negro had killed her?

A. Not then.

[fol. 226] Q. Didn't you ask him why? You wanted to find out his motive, didn't you?

A. At that time of course we were interested in getting the negro.

Q. And you got the negro at 1 o'clock or 1:30?

A. Sometime after 12.

Q. Now this warrant says that Mr. Ashcraft was given a hearing in the jail before Squire Magevney at 8:30 A. M.?

A. I saw Mr. Magevney here.

Q. Did you go in there and testify?

A. No, sir.

Q. You didn't know, at 9:30 when you were called to witness this so-called confession, that the defendant E. E. Ashcraft had plead not guilty at 8:30 A. M.?

A. I didn't know how he plead.

Q. If the warrant says—

General Gerber: It speaks for itself.

Mr. Bickers: That's all.

Cross-examination.

By Mr. McTighe:

Q. Until this statement which you testify was made by Mr. Ashcraft, you never heard the name of Ware before that time in your investigation?

A. That oral statement, no, sir.

Q. There had been no mention of Ware before that and [fol. 227] you had investigated a number of negroes in his neighborhood?

A. That's right.

Q. You had made an investigation at a number of places to see if there was any negro spending a lot of money?

A. I didn't investigate that but I heard it was done after Ware was arrested.

Q. Do you recall—I ask you to look at page 5 of Ware's statement:

“Question: Then what did you do?

Do you see that?

A. I will accept your reading, Mr. McTighe.

Q. The answer is:

“Answer: I sat on the bridge on Chelsea and Oriole, I sat there 15 minutes, and I gets off of the bridge, and walks down the road two or three times, and then I goes home. I had sat there on the bridge for 15 minutes, and then I gets up and goes to bed. Wednesday night at 1 o'clock he comes to my house and knocks on my door.”

A. That's right.

Q. Now, Mr. Ashcraft first took you to the wrong street and then to the wrong house?

A. Yes, sir.

Q. Did he explain why he couldn't find the right street, when he had been there before?

A. He didn't explain that.

[fol. 228] Q. As a matter of fact, when Ware and Ashcraft got together there in the jail the negro called him "Mr. Johnny"?

A. Mr. Johnny Ashcraft, yes, sir.

Q. Did he call him "Aircraft" or "Ashcraft"?

A. Ashcraft.

Q. Mr. Ezzell, you have a cell in the jail where you put lunatics, haven't you?

A. It is a padded cell where we put people to keep them from hurting themselves.

Q. Did you put Ware in that cell that night?

A. No, sir, we didn't.

Q. As far as you know John Ware had never been in this county jail before that night?

A. As far as I know.

Q. There is no way you can explain Ware's previous statement that he was placed in that padded cell; there is no way you can explain how he knew where it was?

A. No more than in going up and down on the elevator he may have seen it. It isn't any secret.

Q. You testified a while ago I believe that the defendant Ashcraft stated that his wife had the flu in May. As a matter of fact, she had the flu in January?

A. I think I said he said he had been planning on getting rid of her since May and ever since she had had the flu she had been hard to get along with.

Q. What did you feed Ware that morning?

A. I didn't feed him anything.

Q. He didn't get anything to eat?

[fol. 229] A. I didn't see him get anything.

Q. As a matter of fact you didn't give this negro any more consideration than you would give any other negro?

A. I had nothing to do with it.

Mr. McTighe: I believe that's all.

Redirect examination.

By General Gerber:

Q. One question. I believe you said that Sunday morning you talked to the defendant Ashcraft about breakfast and he ordered buttered toast and coffee?

A. Yes, sir.

Q. And I believe you further testified that he had breakfast on the morning the statement was made?

A. Yes, sir.

Q. State to the jury whether at any time Sunday he was fed?

A. Sunday afternoon he ordered a plate lunch consisting of some kind of meat and vegetables and a pot of coffee.

General Gerber: That's all.

(Witness excused.)

(Adjournment.)

Oct. 27, 1942. 9:30 A. M.

EVERETT PIDGEON, being first duly sworn testified as follows:

Direct examination.

By General Gerber:

Q. Please state your name to the Court and Jury?

A. Everett Pidgeon.

[fol. 230] Q. You hold what position, Mr. Pidgeon?

A. President of the Coca-Cola Bottling Company.

Q. You have lived in Memphis how long?

A. 48 years.

Q. Mr. Pidgeon, I will ask you if, on the early morning of June 16th, 1941, you had occasion to come down to this building?

A. Yes, sir, between 9 and 9:30 Sheriff Joyner called and asked me to come up here, and after I got here he took me to the 5th floor and said he wanted me to witness a confession made by Mr. Ashcraft.

Q. Did you later see Mr. Ashcraft upstairs?

A. Yes, sir.

Q. Do you remember who was in the room?

A. Yes, sir, sheriff Joyner, Mr. Waldauer, Mr. Ezzell, Mr. Becker, Mr. Battle and myself.

Q. I will ask you if at any time any statement was read

A. Yes, each one of us was given a copy of the statement and Mr. Ashcraft had one and Mr. Becker read the statement and we followed it through.

Q. I will ask you if at the time Mr. Becker concluded the reading of that statement, Mr. Ashcraft was asked to sign it?

A. Yes, sir; after Mr. Becker read the statement he asked Mr. Ashcraft if it was true and he said yes and he asked him to sign it and he said he would rather see his lawyer first. Then Mr. Castle asked him if the statement was true and he said yes. He was asked then how he had been treated [fol. 231] and he said mighty fine.

Q. After that did you leave the room?

A. Yes, sir. I came out and saw Mr. Magevney and he had a paper in his hand and I left.

General Gerber: That's all.

Cross-examination.

By Mr. Bickers:

Q. How did Mr. Ashcraft look that morning?

A. He looked very cool and collected.

Q. Didn't look tired?

A. No, sir.

Q. Nobody told you he had been up 36 hours?

A. No, sir.

Q. That was about 9:30?

A. Between 9:00 and 9:30.

Mr. Bickers: That's all.

Mr. McTighe: No questions.

(Witness excused.)

HUGH MAGEVNEY being duly sworn, testified as follows:

Direct Examination.

By General Gerber:

General Gerber: If the Court please, at this time, before we go any further, we have a photostat of the Tom Ware

account with the Federal Clothing Store. We want to offer it in evidence.

The Court: All right.

(Exhibit A—Burke—received in evidence.)

[fol. 232] Q. State your name to the Court and Jury?

A. Hugh Magevney.

Q. You have lived in Memphis how long?

A. 40 years.

Q. Practically all your life?

A. Yes, sir.

Q. At the present time do you occupy any official position in Shelby County?

A. I am a Justice of the Peace and a member of the County Court.

Q. You have been a Justice of the Peace in Memphis and Shelby County how long?

A. Over four years.

Q. Previous to that time what did you do for a living?

A. I was engaged in the practice of law and was athletic coach at Central High School for 13 years.

Q. State to the jury if you had occasion to come down to this building on the morning of June 16, 1941?

A. Yes, sir, I did.

Q. What was your purpose in coming here?

A. I was called by the sheriff to come down to the county jail and I didn't know for what purpose until I got here.

Q. When you got here what did you find to be the purpose?

A. I was told I was to plead a party by the name of Ashcraft and another party by the name of Ware.

Q. At that particular time I will ask you if you had occasion to issue any warrants for John Ware, alias Tom Ware and E. E. Ashcraft?

[fol. 233] A. I did.

Q. I want to show you the warrants, Mr. Magevney. It reads: "This day personally appeared before me, George A. Becker, and made oath that on the 4th day of June, 1941, one E. E. Ashcraft did commit the offense of murder in the first degree by wrongfully, willfully, deliberately, feloniously and premeditatedly and of his malice aforethought, kill and murder Zelma Ida Ashcraft." Did you have occasion to issue that warrant?

A. Yes, sir.

Q. Who was the affiant to the warrant?

A. George A. Becker.

Q. I will ask you if you had occasion to issue a warrant for John Ware?

A. Yes, sir.

Q. Did you issue that warrant against him?

A. Yes, sir.

Q. Who was the affiant on that warrant?

A. George A. Becker.

Q. Will you tell us about when these warrants were issued?

A. Those warrants had been typed and were brought to me by George A. Becker and I issued them upon his affidavit and the time I would say was around 8:30 in the morning.

Q. Squire, I notice that the warrant shows here that deputy sheriffs Davis, Becker, Matteer and Key were summoned to appear before you on the 16th day of June, 1941, at 8:30 A. M. to testify. Did you set that hearing for 8:30 A. M.?

A. Yes, sir.

[fol. 234] Q. Did you fill in and set that date and time?

A. Yes sir.

Q. I hand you the Ashcraft warrant and ask you if you set that time?

A. Yes, sir.

Q. Mr. Magevney, did you arraign both of these defendants at the time the warrants were issued?

A. No, sir; there was some lapse of time.

Q. Do you know how long a time expired before you arraigned them, from the time the warrants were issued?

A. I would say from 45 minutes to an hour.

Q. I will ask you whether, after the time these warrants were issued, you had occasion to go anywhere in this building?

A. Yes, sir, after the warrants were issued I was told they were waiting to type some statement and I stayed downstairs until I was called to go on the 5th floor of the jail to plead these men.

Q. Were you downstairs?

A. In the office of the sheriff, yes, sir.

Q. How long would you say you were down there, approximately?

A. Oh, I would say an hour.

Q. You spent that much time down there after you had issued these warrants?

A. I would say so.

Q. And you say later you went up where?

A. To the 5th floor of the county jail.

[fol. 235] Q. And after you got to the 5th floor, did you immediately arraign Ashcraft and Ware?

A. Yes, sir.

Q. I will ask you if you had occasion at that time to see any people up there that were in the room with Ashcraft?

A. Well, as I came off the elevator there were several people coming out from the corridor of the 5th floor and I spoke to them. There was Mr. Castle and Mr. Pidgeon and I think General Battle and George Becker.

Q. Were they coming out of the elevator or towards it?

A. They were coming out of the little ante-room up there.

Q. After you saw them come out of the little ante-room and you spoke to them on the floor near the elevator, you had occasion to arraign the defendant Ashcraft?

A. Yes, sir.

General Gerber: You may take the witness.

Cross examination.

By Mr. Bickers:

Q. You had an office uptown?

A. Yes, it was located at 119 Madison.

Q. You got to the jail about what time?

A. I should say about 8:15.

Q. Were there any witnesses in the ante-room at the time of the arraignment?

A. I don't think there were.

Mr. Bickers: That's all.

Mr. McTighe: No questions.

(Witness excused.)

[fol. 236] General Gerber: If the Court please, I would like to introduce these by agreement of counsel.

Mr. Bickers: We have no objection.

The Court: Let them go in by agreement.

(Exhibits #1 and #2 Magevney received in evidence.)

General Gerber: The state rests in chief.

State rests in chief.

Mr. Bickers: I would like to have a recess so I can talk to my client.

The Court: All right, sir.

(Recess.)

(Defendants' Proof)

E. E. ASHCRAFT, the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Bickers:

Q. Mr. Ashcraft, you are charged by the State of Tennessee, in an indictment, with having wilfully, maliciously, feloniously and premeditatedly hiring, procuring and commanding one Tom Ware to kill your wife on the 5th day of June, 1941. Are you guilty or not guilty?

A. I am not guilty.

Q. Mr. Ashcraft, how long have you lived in Memphis?

A. Oh, I don't know. I have been here several years; about six years I would say; approximately six years. That [fol. 237] is, steadily, but I have been in and out of here practically all my life.

Q. On the 5th day of June, 1941, you lived where?

A. 3520 Stanton Road.

Q. The deceased Zelma Ida Ashcraft was your wife?

A. That's right.

Q. Where were you married?

A. Pine Bluff, Arkansas.

Q. Had you and your wife lived continuously together from the time you married her until the time of her death?

A. Outside of when she would go on visits, yes, sir.

Q. Did she have a habit of making out of town visits?

A. Oh, yes; quit-frequently. She made visits to Helena, Arkansas; to Kentucky to her mother's and she made visits to Little Rock and down in Mississippi to Mrs. Rommel's.

Q. State whether or not your position required you to be absent from Memphis a considerable portion of your time?

A. Well, on some jobs it would, yes.

Q. What kind of work are you in?

A. Construction work.

Q. What part of it do you do?

A. I do a little of all of the machinery end of it. I operate drag lines, shovels, clam shells, pile drivers, concrete mixers and anything they want me to do.

Q. Who were you working for at the time of this tragedy?

A. Korsmo Construction company.

Q. Where?

A. At Bellevue Pumping Station.

[fol. 238] Q. What were your duties at the time?

A. At that time I was running a clam shell.

Q. Explain to the jury what kind of work that is?

A. You have a bunch of loose dirt over here and a deep hole and a high concrete wall and we have men tamping the dirt down with hand tamps and I operate the clam shell which picks the dirt up. There is a government inspector down in the hole and tampers are tamping this dirt down. I would reach over and get a bucket full of dirt, lower the bucket and get it, and spread the dirt and while I was getting another bucketful the men would tamp it down with hand tamps.

Q. You dipped the dirt up with a big shovel—

A. And the clam shell grabs it and lifts it up.

Q. Does your work require skill and steady nerves and patience?

A. You can figure that. It sure would, because of those men working under you. The least little slip of the foot brakes and you would kill a bunch of men.

Q. About how many men were working in that hole on June 5, 1941?

A. There was one government inspector down there and I would say 7 or 8 laborers.

Q. All during the day in this hole?

A. Yes, sir.

Q. Tell the jury what time you got home on the 4th of June, 1941, from your work, if you got home at all?

A. On the 4th. Lets see.

Q. It is charged that your wife was killed on the morning of June 5, 1941.

[fol. 239] A. We worked a little late that afternoon, trying to get as much done as we could, and the best I remember now we quit work at 7 o'clock and I got home, it is approximately a 15 minutes drive from where I worked to my home. I would say approximately 7:15; somewhere in the neighborhood of 7 or 7:15.

Q. Did you see anyone in your home when you got there other than your wife?

A. Yes, sir, there was four student nurses that visited in my home frequently, Miss Nancy Hightower and Miss Geraldine Minich and the two Rice sisters.

Q. They were there when you got home?

A. Yes, sir.

Q. Had it been their custom to visit your home?

A. Oh, they would come out there and make our home their home; quite frequently.

Q. Now, when you reached your home and found these four guests there, had you had supper or not?

A. No, they were waiting supper for me, I think, but hadn't finished eating.

Q. Tell the jury in your own way what happened from 7:15 until 10 o'clock on that occasion?

A. Well, as I come in the front door with my lunch box, Hazel Rice and Geraldine Minnich was in the living room, and as I come through one of them—I wouldn't say which—asked me did I bring anything for a Tom and Jerry. They meant for a highball. I said no, that I had a slight headache, and they made some slight remark.

[fol. 240] Q. After that did anybody go and get any gin?

A. Yes, sir. I went into the dining room and into the kitchen and put my lunch box up and I had a couple of anacins I was going to take for my headache and I was going to get ready for supper and my wife said "Do you feel like running down and getting—"

General Gerber: We object to that as hearsay, what other people said.

The Court: Objection sustained.

Q. Did you go after the gin?

A. I did not.

Q. Who did?

A. My wife went after it with Miss Geraldine Minnich and Miss Hazel Rice.

Q. Did they get it?

A. They came back with a bottle of gin.

Q. Did they make a highball or a Tom and Jerry?

A. Here's how it happened. Miss Hightower was requested to call up the drug store and get two coca colas and four seven ups. The delivery boy left four coca colas and two seven-ups. When they got back with the gin they called

the drug store back and told him he had left four coca colas and they wanted four seven ups. I was in the living room reading the paper.

Q. Just tell what they did and not what they said?

A. They wanted to know how much gin I wanted in my highball and I told them I didn't want no highball because it wouldn't do my headache any good and I continued to read [fol. 241] the paper and after they drank them I went in and had supper.

Q. You went to the table with your guests?

A. Yes, sir.

Q. Did you sit around and talk after finishing supper?

A. Yes, sir, we sat there naturally and I finished reading my paper and they went in the living room, part of them and part of them in the bed room.

Q. Did you know at that time that your wife was contemplating a visit to her mother the following day?

A. Yes, sir, she told me she was.

Q. You knew she was going?

A. Yes, sir.

Q. Did you know what time she was expected to leave on that night, or the next morning?

A. Not at that time, no, sir.

Q. What time did you and your wife leave your home that night?

A. Well, I don't know. I'll tell you, two of these nurses had been on duty and had to be on duty at ten o'clock and we left there sometime after 9 o'clock, I would say between 9 and 9:15.

Q. Whom do you mean when you say "we"?

A. The four student nurses, my wife and myself.

Q. You left there between 9 and 9:15?

A. Well, it wasn't 9:30. It would have been between 9 and 9:15.

Q. Had you left your house from the time you got home from work at 7:00 or 7:15 until you left with the nurses to go to the Methodist hospital?

[fol. 242] A. No, sir, I wasn't out of the house.

Q. Did you go out of the house at all?

A. No, sir.

Q. That is, until you left in the car with the four nurses and your wife?

A. That's right.

Q. I assume you carried them to the hospital in the car?

A. Yes, sir.

Q. Was that your usual custom when they visited you, to take them back to the hospital?

A. Yes, sir, I always did that.

Q. When you got them to the hospital what did you and your wife do?

A. We left them out at the hospital I would say a little before 10 and started back home and stopped at a filling station on the corner of Jackson and Hollywood and filled up with gas, put two quarts of oil in which made it full and then continued on home.

Q. Had you learning during that time that your wife—

General Gerber: Just a moment. We object to any hearsay.

The Court: He may ask that question. Objection overruled.

A. Sir?

Q. Had you learned that your wife expected to leave home early the next morning?

A. She was going to leave but she didn't state the time.

Q. And you had the car serviced?

A. Yes, sir.

Q. Filled with gasoline and oil?

[fol. 243] A. That's right.

Q. Did your wife stop anywhere on the trip from your home with the nurses to the Methodist hospital?

A. Yes, sir, she stopped at Hall's Drug Store.

Q. Do you know of your own knowledge what she stopped there for?

A. Well, she went in there to get some amytal tablets to use after she got home so you could get some rest.

Q. She was accustomed to using amytal tablets?

A. Well, she had used them quite frequently.

Q. In that connection I will ask you if your wife was a slender, delicate woman?

A. Well, I would say she was not in the best of health, but she always seemed to be satisfied and contented.

Q. Do you know of your own knowledge that she got those amytal tablets.

A. No, from my own knowledge I could swear it.

Q. All you know about that would be hearsay?

A. Yes, sir.

Q. When you got back home from the Methodist Hospital, what did you and your wife do after having the car serviced?

A. Well, we went in the house and sat down on the divan and talked, just ordinary conversation and it was getting late and I asked my wife "have you got everything packed"? and everything was packed with the exception of powder and paint or whatever women use. The grip was sitting on the floor in the bed room by the foot of [fol. 244] her bed, open and I said "have you got money enough to make the trip on?" and she said—

General Gerber: We object to what she said.

The Court: Objection sustained.

Q. Did she have any money with her at the time, if you know of your own knowledge?

A. Yes, sir.

Q. How much?

A. Well, she had in the little coin purse that fits down in her pocket book a twenty dollar bill, a five dollar bill and five ones. She had a silver dollar and some change; I would say about \$32.00 or \$33.00.

Q. Did you give her any more money at that time or later?

A. Yes, I did.

Q. How much?

A. I gave her a \$20 bill.

Q. That made her have how much?

A. I would say \$52 or \$53, for her trip now.

Q. Yes, sir.

A. But she had \$200.00 besides that.

Q. You know that of your own knowledge?

A. Yes, sir. That was in the chamois bag.

Q. You say that was in the chamois bag. I will ask you whether or not it was your wife's custom to keep her money in this chamois bag?

A. Yes, sir.

Q. How long had she practiced that custom?

A. Well, ever since before 1931.

[fol. 245] Q. And you know she had \$200.00 in that bag?

A. Well, I had seen her counting it. In fact we were saving money to buy a new car with and the way we would do, after we would pay our bills and we would keep the surplus part of the money and when we got \$50 we wanted

to put away we would do that, and I had \$200 and she had \$200.00 that we called "put away" for our car money.

Q. After you found out about her financial condition, what did you do at that time?

A. I says "Well, I'm getting sleepy and I believe I'll go to bed. What time do you want to get up in the morning?" The remark was made, "pretty early——"

General Gerber: I object to anything she said at that time.

The Court: Objection sustained.

Q. You found out that you were expected to get up early the next morning?

A. Yes, sir.

Q. And your wife was expected to get up early the next morning.

Q. Yes, sir, at 3 o'clock.

Q. Did you then go to bed?

A. Yes, sir, I went in and set the alarm clock and went to bed. I set the alarm clock for 3 o'clock.

Q. Did you tell her you had set the alarm clock for three o'clock.

A. Yes, sir.

Q. Did she retire?

A. After she put some medicine in the little Persian kitten's eyes, and after she taken an amytal, she did retire. [fol. 246] This is only hearsay; I wasn't in the kitchen when the amytais——

General Gerber: We object to him testifying as to something he knows nothing about.

Q. You didn't see her take the amytal?

A. No, sir.

Q. You knew she had it?

A. Supposed to have it, yes.

Q. Did the alarm clock go off at 3 in the morning?

A. Yes, sir.

Q. Did you get up?

A. I did.

Q. Your wife got up?

A. Yes, sir.

Q. Did she dress for travel?

A. Yes, sir she started dressing and I got up and slipped on my trousers and shoes but didn't put on my shirt.

Q. What kind of trousers did you have on?

A. Khaki work trousers.

Q. How much time did you spend getting your wife ready for her journey?

A. I went in the kitchen and made some coffee and she came in and drank some.

Q. She drank some coffee?

A. Yes, sir, and some grapefruit juice. She stood up and didn't even sit down to drink her coffee and grapefruit juice.

Q. After this was finished what did you do next?

A. Well, she put her powder and make up on and put them in the grip and I taken her grip and hat out to the car and I was told to put the cat out before going to work.

[fol. 247] Q. Mr. Ashcraft, there has been introduced in evidence as an exhibit to the testimony of one of the witnesses, a diagram of the various roads and highways and sloughs and creeks. One part of it shows Stanton Road. Will you point out just where you lived?

A. Here (referring to map).

Q. Where is Stanton road?

A. I live right where that mark is. Mrs. Walker lives right here and—

Q. I am talking about where you lived?

A. Yes, sir, right there.

Q. On the left side of your house as you come out is a vacant lot?

A. Yes, sir.

Q. Now, this is Merker Street—

A. There is one 50 foot lot between my place and Merker.

Q. Where was the driveway that lead to your garage with reference to your house?

A. It was right next to Merker.

Q. In order to get out of your driveway, you backed out?

A. Yes, sir, always backed out.

Q. Do you recall whether there is a telephone pole or a light pole near the corner of Merker and Stanton, or do you know?

A. I wouldn't say for sure.

Q. Where do Mr. and Mrs. Gambreal live?

A. It would be right straight across in front of this lot (indicating on map) with respect to mine;

Q. Now on this morning of June 5, 1941, did your wife leave your house?

[fol. 248] A. Yes, sir.

Q. About what time?

A. I would say approximately 3:30.

Q. How did she get the car out of the yard?

A. She backed out into Stanton and headed towards Chelsea.

Q. Did she back out of this street toward Merker?

A. Backed up far enough to get straightened out and then went down Stanton Road.

Q. That put her some little distance beyond your porch?

A. Yes, sir.

Q. When she left there and started toward Chelsea, what did she do with respect to you?

A. Well, as she was backing out I walked out on the front porch and stood by the front door.

Q. Was your porch light on?

A. Yes, sir and she had her glass rolled down and I threw up my hand and waved to her and she waved back to me.

Q. And that's the last time you ever saw your wife alive?

A. That's right.

Q. Now, something has been said about your wife having had a number of operations performed on her?

A. That's true, she had.

Q. Were those operations performed on her before or after you married her?

A. Well, a considerable time before. There had never been no operations performed afterwards.

Q. Yes, sir. Did you know at the time you married her [fol. 249] that these operations had been performed on her?

A. Yes, sir.

Q. How long before you were married?

A. Oh, I would say around six or eight months.

Q. Where were you living at that time?

A. I was working in Helena. She was working there, too.

Q. Were you married in Helena?

A. No, sir, Pine Bluff, Arkansas.

Q. You married when?

A. Sometime in 1929. I was on five different jobs and it is hard for me to tell the exact date. The summer of 1929.

Q. Now since your marriage, you and your wife have worked and cooperated together in order to accumulate some property?

A. Yes, sir, sure we did.

Q. I will ask you whether, during your entire married life, you and your wife worked in harmony and cooperation for the purpose of accumulation of some property and money?

A. We did.

Q. I will ask you if, at the time you were out on jobs or away from your work, your wife attended to all of your business affairs?

A. She did.

Q. I mean by that, did she deposit the money in the bank and arrange for the purchase of property?

A. Yes, sir.

Q. And did she settle or having anything to do with the settling up of an estate in which you were interested sometime previous to this tragedy?

A. She did.

[fol. 250] Q. Did she leave Memphis to do that?

A. Yes, sir, went to Helena, Arkansas.

Q. Did she settle the estate?

A. She did.

Q. How much money did she bring back?

A. She didn't bring it back. It was mailed to us, \$1600.00.

Q. Did she deposit that money, if you know?

A. Yes, sir.

Q. You had nothing to do with it?

A. No, sir, I turned it over to her.

Q. And you used the same method with regard to your salary or any other money that came into your possession?

A. That's right.

Q. You people were buying that place out there?

A. Yes, sir.

Q. You heard the record read about that property passing to you and your wife?

A. Yes, sir.

Q. You understood that?

A. Why sure.

Q. You understood there was a mortgage on that property?

A. Yes, sir.

Q. Did she handle all of the details with reference to the purchase of that property?

A. I was up there when the first deal was made, but all of the payments or notes and everything else was handled by her.

Q. Now you saw in evidence here a bank book, an account [fol. 251] opened in 1937, in the savings department of the Union Planters Bank?

A. Yes, sir.

Q. I will ask you if from the time of the opening of that savings account, you and your wife constantly deposited money to the credit of that account?

A. When we had something to deposit, and nothing to spend it for, we would deposit it. I think the books will show that.

Q. About this \$600.00 in the commercial account, was that account just for paying your running expenses, or for any other purpose.

General Gerber: I don't want to object, but he is leading the witness. Let the witness testify.

The Court: You have been leading the witness, Mr. Bickers.

Q. What was that account for?

A. That account was put there for the sole purpose of installing an electric pump. In other words, our house wasn't a modern house. It didn't have running water, it didn't have a bath and we put that in the bank to pay the plumber for bath fixtures that we were going to put in and a pump.

Q. And that account was opened in May of 1941?

A. Yes, sir.

Q. What was the condition of your house when you took it over?

A. It was badly run down. It had to be for the price that it sold for.

Q. What I am driving at is this: did you then start to improve the house and put it in living condition, and what [fol. 252] if anything did you do to it?

A. Well, first of all the window facings were full of nail holes and I repaired all the window facings and the door facings. I liked the type that Mr. Gambreal had in his home.

Q. Did he work with you on that job in beautifying or improving your home?

A. He did all the carpenter work.

Q. What did you do?

A. I did the painting.

Q. Did you make any outhouses and chicken yards?

A. Yes, sir.

Q. When did you do this repair work?

A. Just odd times.

Q. Did you work on it at night.

A. Sometimes at nights, and on Saturdays when Mr. Gambreal wasn't working at his regular job. We also took all the paper off the inside of the house, plump down to the wood. We recanvassed it and repapered it with a good grade of paper. We had the floors resanded and refinished by some contractor that my wife had called up and did the work.

Q. Mr. Ashcraft, when did you first learn that your wife had been killed?

A. Well, when I come on home on that evening and I was coming alongside Mr. Gambreal's house and I heard Mrs. Gambreal say "There's Mr. Ashcraft now." I started walking towards this man—what is his name?

Q. Mr. Matteer?

[fol. 253] A. Yes, sir; he told me he had found that my wife had been murdered and I told him not my wife, because she was in Kentucky, and he said "yes". I asked him how he knowed it was and he told me by finding the driver's license. We walked over to the house and I put up my lunch box.

Q. Did another man come in the house that you later learned was an officer?

A. Not at that time that I can recall. Not right at that present time, but Mr. Becker and somebody else come in later on.

Q. About how long were you in there before they came?

A. That would be hard to estimate because I was really tore up over this happening.

Q. You felt, after they showed you the driver's license, that there could be no doubt about it being your wife?

A. Well, I didn't have no doubt then.

Q. How long did you stay there with these folks?

A. I don't know. It might have been 20 minutes and it might have been 30 minutes; I couldn't tell you.

Q. Did you go from there with the officers to some other section of town?

A. Yes, sir.

Q. For what purpose?

A. He asked me if I knew where this maid lived. I told him I knew the street where she lived on, because lots of afternoons my wife and I would be going to town and we would let Cora off and she could ride to Ash and Chelsea. She would get off there and walk in that direction, and I taken Mr. Matteer and the other gentleman and we found [fol. 254] out where she lived and she wasn't at home.

Q. Where did you go from there?

A. To Collins undertaking establishment.

Q. Was anyone there when you got there with reference to your friends or police officers?

A. Miss Nancy Hightower was there and to the best of my remembrance Mr. V. L. Smith and his wife had been there between the time I come out.

Q. When you went into the undertaking establishment, what happened?

A. Well, they asked me to identify my wife and I did.

Q. What did you do with reference to identifying her?

A. I told them she was my wife and naturally I was horrified and grief stricken over the awful tragedy.

Q. Did you go up to her body?

A. I did.

Q. Is it true that you patted her on the arm?

A. Yes, sir, and said something about I didn't know who in the world did that because I had no idea who would commit such a crime.

Q. There was an examination made of her at that time with reference to a chamois bag?

A. Yes, sir, they asked me where she carried the chamois bag.

Q. You had told them previously?

General Gerber: Just a minute.

Mr. Bickers: I am talking about the officers.

[fol. 255] Q. You had told them previously that she had a chamois bag?

A. Before we left the house I asked them if she had been robbed and if they had found the bank books and they said she didn't have no money and no bank books.

Q. Was it her custom to carry these bank books with her?

A. Yes, sir. If I was working I didn't want to carry the money in my pocket and I didn't want to leave it at home and I asked her to carry them because I didn't want to carry them in my pocket and sweat them out.

Q. With reference to the chamois bag, was there an effort made to locate that bag at the undertaking establishment?

A. Yes, sir.

Q. What was done?

A. Well, they unfastened the front part of her dress and looked and there wasn't no bag there.

Q. They did what the officers testified?

A. Yes, sir.

Q. Right at this point, explain how that chamois bag fastened on to whatever it did fasten on to?

A. Well, can I demonstrate how it was made?

Q. Yes.

A. I'll show you just how it was. It was sewed like this (witness demonstrated with a piece of paper): it was sewed down and across, sewed across the edges, and at the top she had one of these dress snaps that come down to hold the dress together. She had one here and one here (indicating). She had bought one of these patented outfits to hold this thing in place, something like you see on curtains in a dining room, from the top to the bottom down the side. It was a spring outfit with a metal piece that [fol. 256] fastened and this metal piece was turned around with three little punch marks, like you might take a nail and punch them, but it didn't go all the way through. Do you understand what I am talking about? The— on the other end was a little round hole where you slip the hook into. My wife bought some kind of a rod and put it on the back portion. I come in from work one time and she showed me; she said—

General Gerber: Object to what she said.

The Court: Objection sustained.

A. Now this piece without burs that I am telling you about, the two burs was filed down here. This end (indicating) was bent down and over. Do you gentlemen understand?

Q. If they don't understand they will tell you.

A. That's right.

Q. I will ask you to state to the jury if up until this time you had said anything to the officers about the condition of your automobile?

A. Yes, sir. I believe that Mr. Becker asked me—I don't remember whether it was at that time or later; I can't recall that time to be exact.

Q. At any rate, sometime during this investigation you told him about the condition of your automobile?

A. He asked me what condition it was in and whether it was all right.

Q. What did you tell him?

A. I told him that on that morning it started all right, but before that it had been missing, and I explained to him [fol. 257] that the top of the radiator hose was leaking when I had drained this anti-freeze out of it, I don't know whether it was the Monday or Tuesday before, but I drained it out and put some permo-tex on the metal part and some shellac and tightened the clamps and filled it back up with water.

Q. When you left the undertaker's what happened?

A. They brought me up here to the jail.

Q. Who came with you other than the officers?

A. Well, in that car just the officers, but Miss Hightower and Mr. and Mrs. Smith followed that car.

Q. Were they here when you got here, or afterwards?

A. I think they come behind us.

Q. What did they do with you when they brought you to the jail?

A. They set in the office downstairs, I believe they said it was the sheriff's office, for a little while.

Q. That's on the ground floor?

A. Yes, sir, in this building. Then they taken me up to the 5th floor.

Q. Who did?

A. Becker and I don't know whether it was three or four of them.

Q. What did they do when they got up here?

A. Well, the asked me if I knew of anybody I thought would commit this crime and if I had any idea, and of course I didn't have no idea.

Q. Did they ask you a number of questions about your past life and present life and your associations and business and who you worked for?

[fol. 258] A. They asked me who I worked for and I don't remember whether they asked me about my past life.

Q. How long were you up there with the officers on that occasion?

A. It seems we left there around 2 o'clock.

Q. Friday morning?

A. Yes, sir.

Q. And you got here what time?

A. Well, it was getting right at dark.

Q. During that time state whether the officers in the room—you don't recall how many of them were there—questioned you closely with regard to who might be the suspect or who might be responsible for your wife's death?

A. Yes, sir, they asked me if I had any suspicion of who committed the crime, but I didn't have no suspicion because if I had suspicioned that anything like that would happen, I wouldn't have let her leave.

Q. Did you try to help them in every way you could?

A. Yes, sir.

Q. Did you offer any idea at that time?

A. I didn't have one. They asked me to stay around where they could get in touch.

Q. How long did you stay around here before you were taken in custody on the 15th of June, 1941?

A. I was out from the time they taken me back this Thursday or Friday morning. We got to my house around 3 o'clock.

Q. That was for a period of ten days?

A. Yes, sir.

Q. Did you telephone to them whenever you found out [fol. 259] what you thought was a clue?

A. I didn't find out.

Q. Did they call you or send for you to come up here?

A. They called and asked me to come up here.

Q. As I understand it, you made two or three trips up here during that ten days?

A. That's right.

Q. You didn't work during that time?

A. No, I wanted to help them if I could.

Q. Did you make that known to your employers?

A. I did, and Mr. Tvedt, the superintendent of Korsmo Construction Company come out Friday or Saturday before they came out to get me. He told me—

General Gerber: Just a moment. Not what he told you.

The Court: Sustained.

Q. During the time you were out and around, did anyone stay in your house any part of that time?

A. Yes, sir, Mr. and Mrs. Lyerly stayed.

Q. Anybody else from time to time?

A. The people would come out and visit and talk with me.

Q. Now where was your wife buried?

A. Out here in this Memorial Cemetery.

The Court: We will take a short recess while the Grand Jury reports.

(Recess.)

Q. Were you taken in custody on the 14th day of June, 1941?

A. I was.

Q. Was it daytime or night time?

A. It was afternoon around 6 or 7 o'clock.

[fol. 260] Q. Who brought you to jail?

A. Mr. Key.

Q. Where were you taken?

A. To that room on the 5th floor.

Q. Describe that room?

A. Well, it is just a big room on that corner of the jailhouse.

Q. Were there any lights in the room?

A. Yes, sir, they had a light down over a desk and some kind of a sink and a hydrant.

Q. I will ask you that desk was about like this table?

A. It wasn't that long.

Q. Were there any chairs in the room?

A. Yes, sir, three or four chairs.

Q. Were they arranged around that desk?

A. Yes, sir.

Q. Who was in there when you got there?

A. Mr. Becker and Preston Battle.

Q. You later learned the names of these men?

A. Yes, sir, I didn't know none of them then.

Q. Were you seated?

A. They told me to take the chair at the end of the table.

Q. Explain to us now with reference to that light. Was it right close to your end of the table?

A. It was hanging down right in front of me and just a little above me.

Q. Do you know anything about candle power? Can you estimate the power of that light?

A. No, I didn't—it was a big bulb and pretty bright; I know that.

[fol. 261] Q. Did these other officers sit down?

A. Becker and Battle did, one on each side. Mr. Becker was on my right side and Mr. Battle on my left.

Q. What was the first word said to you when you got in this position?

A. I sat down and Mr. Becker said "What in hell did you murder your wife for?"

Q. That was the first word said to you?

A. That's the first word spoken.

Q. What did you tell him?

A. I told him he had me all wrong, that I never harmed nobody in my life.

Q. I will ask you in that connection if you have ever been in any kind of trouble in your whole life before?

A. No, sir, not in my 45 years.

Q. Were you ever in court until this thing came up?

A. Well, I might have been to have some papers fixed up, but that's all.

Q. When he said that to you and you made that reply, what happened?

A. Then he began to question me and told me, "Well, can you explain about these amytals?" Becker said that I told him out at the house that my wife had a headache and taken amytals for a headache. Amytals is not for headaches; they are to produce sleep. I told him that she said if her headache got worse she would stop and get a box of anacins or empirin—not amytals.

Q. Tell the jury what happened from then on out?

A. Well, one of them would ask me a question and accuse me of murder and another would question me.

[fol. 262] Q. Cross examine you back and forth.

A. Yes, sir. And they would ask me where I was born and if my mother and father was living.

Q. How long did this examination, both direct and cross, last?

A. I don't know. It was several hours. I didn't look at the time.

Q. Did you tell them during this examination at all times that you didn't kill your wife?

A. Sure. I still say it.

General Gerber: I don't want to interrupt, but I object to the leading questions.

The Court: Objection sustained.

Mr. Bickers: I am asking him——

The Court: The Court has ruled, Mr. Bickers.

Q. I will ask you whether or not, during this investigation by these two men and cross interrogation, whether or not you told them repeatedly that you had nothing to do with the killing of your wife?

A. I did, yes, sir.

General Gerber: We object to the leading question.

The Court: Objection overruled.

Mr. Bickers: That's not leading.

General Gerber: It is leading.

Mr. Bickers: I asked him——

General Gerber: I know. You are putting the answer in the witness' mouth.

The Court: General, the Court has ruled on that.

General Gerber: All right, sir.

[fol. 263] Q. Did they want you to make a confession?

A. They acted mighty like they did they way they were examining me.

Q. Can you give the jury any idea as to the time they quit examining you on that occasion?

A. No, I couldn't. I would say it was a good long time. It might have been six or eight hours.

Q. In your opinion six or eight hours?

A. Yes, sir.

Q. You heard the testimony of Mr. Becker on the stand that he examined you from then until 3 o'clock. Is that about right?

A. To tell the truth I don't know.

Q. Did they leave you later on?

A. Yes, sir.

Q. Who took over when they left?

A. Bob Ezzell.

Q. What did he ask you?

A. Well, he asked me the same line of questions about if I committed the crime and why I committed it and I told him I hadn't, and it was either that time or the next time he was there, he said: "I haven't been on this job long and I would like for you to come on and give me a confes-

sion, so I would be given credit and it would help me on my job." and I told him that I didn't hold my job by getting somebody to swear a lie; that I held my job by the sweat of my brow.

Q. Had you ever seen Mr. Ezzell before in your life?

A. No, sir, I didn't know who he was.

Q. Then you couldn't know when he had been employed?

A. No, sir, I didn't know nothing about him.

[fol. 264] Q. Was anybody in there with him then?

A. To the best of my recollection, I think this fellow Key would maybe come in and go out.

Q. How long did he examine you, if you know?

A. Well, I wouldn't say exactly but somewheres close to the same time, to the best of my knowledge now.

Q. Was he then relieved?

A. Yes, he was relieved.

Q. Who took over?

A. Mr. Battle and George Becker came in and released him.

Q. Do you know whether that was daylight or dark?

A. No, sir.

Q. Could you tell from the inside of that room whether it was daytime or night time?

A. No, the way the light was shining I couldn't tell.

Q. Had you been asleep from the time you went in there at 7 o'clock Saturday night until Becker and Battle left?

A. No, sir.

Q. Had you had anything to eat?

A. No, sir.

Q. Did you make known to these men that you hadn't had anything to eat since lunch?

A. I told them I would like to have a cup of coffee and a sandwich or something and one of them said "you will get it after a while" or something like that.

Q. When Becker and Battle took over the second time, you couldn't tell how long, but Mr. Ezzell had examined you, in your opinion, about the same length of time that Becker and Battle had?

A. Yes, I would judge it about the same.

[fol. 265] Q. What did they do when they took over?

A. They went through the same old grind that they did on the first.

Q. Did they charge that you had committed that crime?

A. Yes, sir.

Q. Repeatedly?

A. Yes, sir.

Q. Did you deny it?

A. Sure I denied it.

Q. Did you try to give them all the information that you could possibly think about that would lead to a clue?

A. If I had had any I would have.

Q. Had you been trying to do that all this time?

A. Sure, I had been trying to think of who might have done it.

Q. Had you moved out of this chair at the time, or this little table, from the time you went in there at 7 o'clock until Becker and Battle took over the second time?

A. I had not.

Q. Had you slept?

A. No, sir.

Q. How long did they question you in the manner you say, back and forth, about having committed this crime?

A. I would say practically the same length of time they did the first time.

Q. State whether or not, from the beginning of the examination of Becker and Battle of you the second time, if at that time anyone produced a Bible or presented one to you?

A. Just a minute now. Let me explain that. That was assistant prosecuting attorney Battle. He went out during [fol. 266] the questioning.

Q. Was that the first or second examination of you?

A. That was his second examination.

Q. He went out and did what?

A. He came back in and Mr. Becker went out and he sat down and read two or three things in the Bible to me. I can't recall what they were because I was so fatigued.

Q. Did he explain to you why he was reading the Bible?

A. No, sir.

Q. What else did he do after that, if anything?

A. Well, after he done that he asked me if I would like to have a little drink of liquor and I told him no, and he sat and stared at me for several minutes.

Q. What do you mean, stared at you?

A. He sat and looked at me like I am looking at you. He said, "Ashcraft, you know that water continuously dropping on a rock will eventually wear a hole in it?" I didn't

say anything, and there was an old batter-up aluminum pitcher setting there by the corner of the table, and he pointed over to a chair—I learned later it was where you take the pictures—and he said “if we tie you in that chair and put this container of water over your head and let it continuously drop on you” and he started hitting on the aluminum pitcher, and he said “You may be a hard-headed son of a bitch but it will eventually knock a hole in your head”. I didn’t give him no answer.

Q. How long did he examine you alone?

A. If I am not mistaken he went out shortly after that; then Bob Ezzell come back.

Q. He took over again?

[fol. 267] A. Yes, sir.

Q. What did he question you about?

A. He just went through the same old grind of the mill; wanted to know why I couldn’t account for it; if I didn’t have no suspicions and didn’t have no idea and no knowledge and could I tell him who I suspicioned.

Q. I am going to ask you if you can estimate the time Mr. Ezzell took over the third time, or did he take over the third time?

A. They all stayed, it looked like to me, about the same length of time.

Q. About 7 or 8 hours?

A. Something like that.

Q. You didn’t know whether it was day or night?

A. No, sir.

Q. Had you been out of that chair at the end of that table during that entire questioning and cross questioning by these different officers at different times?

A. No, sir.

Q. From the time you went in that room?

A. No, sir.

Q. Have you been to the lavatory or toilet?

A. I had not.

Q. Had you had a drink of water?

A. No, sir.

Q. Had you been offered a drink of water?

A. No, sir.

Q. What did they say when you asked for one?

A. Told me when I gave a confession I would get a drink.

[fol. 268] Q. Who told you that?

A. Becker, Ezzell and Key.

Q. Did Key examine you while Ezzell was in there?

A. No, he examined me by himself.

Q. Did he examine you before Ezzell took over or afterwards, the last time? Did he examine you after the negro's name was mentioned, or before?

A. Before.

Q. What did he do?

A. Well, he come walking in the room and Bob Ezzell closed all the windows and got up and walked out and said something about manhandling.

Q. What do you mean, said something about manhandling?

A. He said "It looks like we are going to have to manhandle you to get you to make a statement." I had done made all the statement I knew when I told them I didn't know nothing about it. This fellow Key come in. He was in his shirt sleeves and he come in rolling up his sleeves and he told me he didn't like me. I hadn't done anything to him.

Q. He told you he didn't like you?

A. Yes, sir.

Q. What else did he say?

A. Then he started in cussing me, calling me all kinds of names, and I started to smoke a cigaret; I had a package in my hand and one in my mouth, and he slapped the cigaret out of my mouth and taken my package of cigarets, and over next to the wall there was a waste basket, and he throws them in there and said "I'll do all the damn smoking there is done here," and he cussed me and I [fol. 269] asked him if I couldn't have a drink of water and they had a pitcher of ice water there and he walked over and poured himself a glass of water, and I asked him if I could have a drink of that hydrant water, and he said "No, I'll do all the damn drinking that's done up here."

Q. What did he say when he cursed you?

A. Called me all kind of sons of bitches and bastards.

Q. Did he charge you with killing your wife?

A. Yes, sir.

Q. What did you tell him?

A. I told him he had me wrong because I ain't never harmed nobody.

Q. Did he do anything else during that examination?

A. He got that picture that you have showing those scalp wounds on my wife's head and he stood up at the right side

of me at the end of the table and then rubbed it across my face.

Q. You mean this picture of your wife that has been made an exhibit showing her wounds?

Q. Yes, sir. He rubbed it across my face and asked me didn't my conscience hurt me and I told him I hadn't done nothing. Then he set his hand on my shoulder holding that picture and said "Don't you feel the weight of that poor woman's head resting on your shoulder? And I told him all I felt was the weight of his hand and he laid the picture down and said "You son of a bitch I wish you would raise up out of that chair so I could knock your God damned head off."

Q. You thought he would do that from his attitude and manner and demeanor?

A. Yes, sir.

[fol. 270] Q. What was your physical condition at that time with respect to being tired or not?

A. Naturally I was wore out.

Q. Were you sleepy?

A. Sure I was sleepy.

Q. Had you been to sleep?

A. No, I hadn't had a bit of sleep.

Q. After he left who took over?

A. I believe, the best I remember now, Becker and Battle took over.

Q. How long did they question you before Mr. Ezzell came back the second time or third time?

A. They didn't question me I believe so long that time but they questioned me a good length of time.

Q. Was this question asked you by either Battle, Becker or Ezzell: "Who have you been carrying backwards and forwards" or words to that effect, to and from your work?

A. Yes, sir.

Q. Who asked you that question?

A. Bob Ezzell asked me that.

Q. Were you there alone with him?

A. That's right.

Q. What did you say?

A. I told him I had never carried anybody from the job home to my recollection, but people had rode from the job to maybe the street car line or to where they got off and walked.

Q. Did you tell him who?

A. Yes, sir.

Q. Who did you tell him?

[fol. 271] A. I told him of a boy who rode from the pumping station to the Chelsea car line by the name of Tackett and I told him he was down in Mississippi.

Q. White or black?

A. White boy.

Q. Who else?

A. I told him there was a boy by the name of Ware who had rode three or four times, in April, to the best I remember, it was along sometime right after the middle of April; that he had rode three or four times and had got off at Chelsea but I had never rode him to his home.

Q. You say you told Ezzell that?

A. Yes, sir.

Q. After you told him that, what happened?

A. He asked me if I knew where Ware lived and I said I knew the street where he lived and he asked me would I go out there with him to see the negro and talk to him and I told him I would and I did.

Q. You went out there with him that night?

A. Yes sir.

Q. You don't know what night that was?

A. No, sir.

Q. Was that the first time you had been out of that room from the time you were arrested Saturday night until then?

A. Yes, sir.

Q. Had you see any other person, up until that time, except General Battle, Becker, Ezzell and Key—anybody else been in that room?

A. No, not that I can recall.

[fol. 272] Q. When you carried them out there, state whether or not you eventually showed them where you thought Ware lived or whether you knew he lived there?

A. I didn't know he lived there but there was where I thought he lived and I showed them but he didn't live there.

Q. Did you later find out where he lived?

A. Yes, some one said he lived next door.

Q. Did you go over there with the officers?

A. I went over next door behind them.

Q. Did you identify Tom Ware as the boy who had ridden with you in April two or three times?

A. That's right.

Q. And you made that known to them?

A. Yes, sir.

Q. What next happened?

A. Well, they got him dressed and Preston Battle and I come on out. After he got dressed they put a pair of handcuffs on him and I went on out to the car and got in the car and they brought Ware out to the car and Bob Ezzell and Ware and myself rode in the back seat.

Q. Was anything said, from the time you got in that position, to either you or Ware by anyone occupying that car until you got to the jailhouse?

A. Not that I recall.

Mr. Bickers: I want the record to show that I object to the passing of notes.

The Court: What happened?

Mr. Bickers: Mr. Becker and Mr. Key are passing notes back and forth, and the jury is in here, and I can't get my train of thought—

[fol. 273] General Gerber: I haven't seen anybody doing that. You are just making a play to the jury.

Mr. Bickers: I now move the Court to enter a mistrial in this cause because the prosecuting attorney has said I am making a play to the jury and I want the Court's ruling on it.

The Court: Motion overruled.

Mr. Bickers: I want the record to show, as counsel for the defendant E. E. Ashcraft, that Mr. Becker has been a witness in this lawsuit and he has been in attendance in the court room from the beginning up to the present time.

The Court: No, that is not a fact. Do I understand you claim Mr. Key passed a note to Mr. Becker?

Mr. Bickers: I said Mr. Becker passed a note.

The Court: Then I misunderstood you.

General Gerber: I want the record to show they have a right to be in the court room.

The Court: That's a matter of law, General.

General Gerber: I want the jury to know what this is all about.

Mr. Bickers: I want the court and the jury to know what it is all about.

The Court: Let's proceed.

Q. I believe my last question to you was that coming back to the court house, jail house, nothing was said until you got up here?

A. That's right.

Q. What happened to you after you got here?

A. They taken me in another office.

[fol. 274] Q. Who?

A. Bob Ezzell.

Q. Did he stay in there with you any length of time?

A. To the best I remember he stayed a while but this fellow Jayroe, come in and sat in there.

Q. What I mean is, were you ever left alone in that room?

A. No, sir.

Q. Do you know what officers stayed there with you?

A. I didn't know them at that time.

Q. Later did you learn their names?

A. Yes, sir.

Q. And who were they that stayed with you?

A. Ezell stayed part of the time and this fellow Jayroe.

Q. Were you carried in the presence of Ware after you both got to the jail—shortly after you got here, or sometime after?

A. Well, it was a good length of time afterwards that they taken me back to the other office where Ware was.

Q. When you first got to the jail with Ware, did you immediately, upon reaching the jail, or, rather, were you carried into this homicide room and caused to identify Ware as the boy you had ridden?

A. I had done told them.

Q. You had identified him as they boy you had ridden on several occasions?

A. Yes, sir.

Q. You didn't see Ware any more for a considerable time?

A. That's right.

Q. I will ask you if, when you next saw him, if a paper writing which has been introduced here as his confession was *was* presented to you when you next saw him, and if so, who by?

A. It was presented to me before I saw him.

Q. You mean that was after you had been in that room for a considerable time?

A. Yes, sir.

Q. Who brought you that paper-writing?

[fol. 275] A. Becker and as best I remember, Ezzell.

Q. What did Mr. Becker say?

A. He read off that statement of Ware's and told me that I had just as well come on and make a statement, something to that effect, and he said I had better make a statement, and I said "The only thing in that statement that I can say is right is that he did ride to and from work with me on three or four trips, but as far as any knowledge of this crime, I don't know nothing about it."

Q. Did you then tell Mr. Becker that you were not guilty of having employed Ware to kill your wife?

A. Yes, sir.

Q. And that that statement was incorrect as to that?

A. That's right.

Q. Were you taken downstairs about that time?

A. Not then.

Q. How long was it before you were taken downstairs?

A. I never went down stairs until Monday—

Q. It was daylight when you first went downstairs?

A. Yes, sir. You mean after Ware was brought in?

Q. Yes.

A. Yes, sir.

Q. Who did you see when you went downstairs?

A. What do you mean, downstairs.

Q. Strike that question. While you were upstairs in this room known as the theft squad room with Ezzell and Jayroe, did anybody else come in there later that morning?

A. Yes, sir. Dr. McQuiston and I believe Sheriff Joyner.

Q. Anybody else with them?

[fol. 276] A. Not that I noticed.

Q. Were any other officers in there?

A. Key and Bob Ezzell was in there.

Q. Was Mr. Becker along?

A. I don't know—don't recall whether Mr. Becker was, but it seems like he was.

Q. What did Dr. McQuiston say to you when he came in?

A. We just spoke and that's all.

Q. Was that all he ever said to you in that room?

A. I was asked to disrobe so he could see if I had been struck.

Q. Did you say to him at that time that you had killed your wife?

A. No, sir.

Q. Did he say that he was up there at that time to witness your oral confession that you killed your wife?

A. No, sir.

Q. At that time you had this confession of Ware before you?

A. Yes, sir.

Q. Did he say anything to you with regard to that confession at that time?

A. He didn't say a thing.

Q. Did he ask you if they had treated you all right?

A. No, sir.

Q. Did anybody ask you that?

A. Nobody asked me that.

Q. You saw Squire Magavney testify?

A. Yes, sir.

Q. Where did you see him?

A. On the 5th floor.

Q. What was he doing up there with respect to you?

A. He come in and read some papers and told me I was charged with murdering my wife.

Q. Were there any witnesses in there at the time he [fol. 277] charged you and said he had a warrant for your arrest for having murdered your wife?

A. No, sir.

Q. Did he tell you at that time you were entitled to counsel?

A. No, sir.

Q. Was anything said to you about counsel or friends or anybody else?

A. No, sir, not to him.

Q. You can't tell about the time that was?

A. No, sir.

Q. After that happened were you brought downstairs?

A. No, sir, not right then, but after that happened, I don't remember the time, but some of them come in and started questioning me some more in the room.

Q. Who?

A. Becker and Battle.

Q. They began to question you some more after the magistrate had been there?

A. Yes, sir, there was a bunch of them there.

Q. What was your physical condition at that time?

A. Very bad. You know, losing two nights sleep.

Q. You were tired and sick and worn out?

A. Sure, I was.

Q. Mr. Becker and Mr. Battle started questioning you some more. What did they ask you if you recall?

A. They told me that Ware had made a statement and I had just as well make one, and I told them that I didn't have no statement to make other than what I had told them about how my wife left home, and Becker said to Ezzell, "Well, we will just make a statement up on him" and [fol. 278] "God dam you, we will convict you on that".

Q. After that did they try to get you to sign a statement?

A. Yes, sir on the 5th floor.

Q. Who was in that room when you were handed a statement to sign?

A. Well, there was Becker and Ezzell and Battle and that's all I can recall seeing.

Q. There might have been other people in there that you don't remember or don't know?

A. There could have been, if they had been behind me.

Q. Was Mr. Castle ever introduced to you?

A. No, sir.

Q. Was anybody in there, with the exception of officers, made known to you?

A. No, sir.

Q. Do you ever remember seeing this boy Waldauer, who testified he took your statement down in shorthand?

A. The first time I remember ever seeing him was at the other trial.

Q. Did you testify at the other trial about General Battle threatening to drop water on your head?

A. I don't believe I did.

Q. Why?

A. I was still physically down and I just didn't tell it.

Q. Do you know whether it was 9:30 or 9:00 o'clock when all these men were in the room and you refused to sign this statement?

A. I couldn't say exactly.

Q. Who requested you to sign that statement?

[fol. 279] A. Becker.

Q. What did you say, in the presence of these witnesses, at that time?

A. I told him the statement wasn't true and I wouldn't sign it.

Q. At that time did you tell them you had had nothing to do with killing your wife?

General Gerber: Let him say what he told them.

The Court: Objection sustained. The question is leading.

Q. Leading in its form. That's true. I will ask you to state what you said, if anything, to all of these various people in that room, with regard to your guilt or innocence in the killing of your wife?

A. I told them I didn't do it.

Q. And at that time Ware's statement had been presented to you?

A. Yes, it had been read to me.

Q. What about this watch business?

A. Well, I don't know nothing about it. I learned later that Cora Taylor had found it on the vacuum cleaner box. The maid was cleaning up and found it and put it in the drawer.

Q. Did you, after your wife left home on the 5th of June, 1941, go back to bed?

A. I laid across the bed but didn't go back to sleep.

Q. Did you work that day?

A. Yes, sir.

[fol. 280] Q. Did you work on this machinery that you have previously described?

A. Yes, sir.

Q. All day long?

A. Yes, sir.

Q. Was a government inspector there during the day?

A. Yes, four or five of them.

Q. Mr. Ashcraft, did you have any guns at home?

A. Yes; a shotgun and an old pistol. I have had them a number of years.

Q. Mr. Ashcraft, were your relations with your wife pleasant and congenial?

A. They certainly was.

Q. Something has been said with respect to sex. Did you ever tell anybody at any time about that?

A. I ain't never told them. That question was put to me. They asked me if it wasn't a fact that I couldn't have relations with my wife and I told them no.

Mr. Bickers: You may take the witness.

Cross-examination.

By Mr. McTighe:

Q. Mr. Ashcraft that night when you accompanied the officers out to Ware's home, you say it was about 1 o'clock at night?

A. I don't know; I didn't have no way of telling.

Q. Were any light on out there?

A. I didn't see none.

Q. It was dark out there?

A. Yes, sir.

Q. When they put you in the car and were bringing [fol. 281] Ware in behind you, did you hear any unusual noise?

A. One time I heard some kind of rumbling like somebody might have fell down the steps.

Mr. McTighe: That's all.

Cross-examination.

By General Gerber:

Q. Mr. Ashcraft, let me say at the very outset that I am going to ask you very few questions, and if I ask you any question that you don't understand, let me know and I'll repeat it.

A. All right.

Q. You were born in Gillette, Arkansas?

A. Yes, sir.

Q. And you lived in Gillette how long?

A. I don't know exactly.

Q. About how long?

A. I left home there and went to work and made my own living from the time I was 11 years old.

Q. How old were you when you left Gillette, Arkansas?

A. Eleven years old.

Q. Where did you go from there?

A. I went down between Gillette and Stuttgart and worked on a farm.

Q. You stayed there how long?

A. I don't know; that's too far back.

Q. Do you remember the first time you were ever married?

A. Sure I remember getting married.

Q. Will you tell us the date of your first marriage?

A. I can't tell the exact date.

[fol. 282] Q. Can you give us the approximate date?

A. No, sir, I can't do that.

Q. Can't do that. Will you tell us how long you lived with your first wife?

A. I would say about a year and a half or maybe two years.

Q. Will you tell us when that was?

A. It must have been 1924 or 1926. I wouldn't say that for a fact.

Q. I want to give you every opportunity in the world to sit there and think and tell us when it was that you and your first wife separated, and if there was a divorce, who got it?

A. She got the divorce. There was papers sent to me and I signed them.

Q. Why did she get the divorce?

A. Because I left her.

Mr. Bickers: Just a moment. I object to that line of cross-examination because it is not germane to this lawsuit at all. That's a divorce that has been granted years and year-ago. What possible good can that do the jury. He is not charged with killing his first wife.

The Court: Are you through?

Mr. Bickers: Yes, sir.

The Court: Objection overruled.

Mr. Bickers: Note my exception.

Q. What was the cause of that divorce?

A. Well, you want me to explain?

Q. I want you to tell the jury.

A. I was working for Hogan Construction Company at [fol. 283] that time and got to where I would come in at night and my wife wouldn't be at home, and she had two little girls and a little boy by the other marriage. The oldest girl was 9 or 10 years old. She would tell me her mother left with her sister and I began suspicious things and this oldest girl—she called me “Daddy”—she said “Daddy do you know there is a man comes here about every other morning to see mama?” I said no and she told me the man's name. There was a man ran a bottling company next door and I asked him if he had seen any man come to my house after I left and he said he had but he didn't want to say anything about it. I told my wife about it and she denied it but finally admitted it and said she would quit

it. It wasn't long before that that the same thing arose again. I finally saw her with this man that the little girl was talking about. Any man wouldn't want to put up with anything like that. I found them together; I told them what had been going on and he didn't deny it.

Q. He didn't pull a pistol on you?

A. No, sir. I told him if he wanted her that bad that he could keep on coming.

Q. Who got the divorce?

A. My wife did.

Q. Why didn't you get the divorce? You had done nothing wrong?

A. I didn't care nothing about it. I let her get it.

Q. On what grounds did she get the divorce?

A. I don't know but the papers were mailed to me at [fol. 284] Texarkana and I signed them.

Q. What was her name?

A. Ida McConnell.

Q. You say she got that divorce in 1924 or 1925?

A. I would judge it was somewhere along in there that I was sent the papers. I wouldn't say the exact year.

Q. After that divorce you married again?

A. Yes, sir.

Q. Who did you marry the next time?

A. Saline Fayard.

Q. Where were you married to her?

A. Gulfport, Miss.

Q. When did you marry her?

A. I wouldn't say the exact year but it was while we were doing a paving job.

Q. That's a pretty big event in a man's life. Can't you tell us when it was?

A. I don't remember the date.

Q. Can't you tell us the month or year?

A. No, I would say somewhere the last part of 1925 or 1926; I wouldn't be sure.

Q. Mr. Ashcraft, how long did you live with Saline Fayard?

A. Not very long. Can you tell me when Sears-Roebuck was completed?

Q. You answer my question.

A. If I could find out that I could tell you.

Q. I want you to tell me how long you lived with her?

A. Sometime after 1927. That's the best I can get it.

Q. Where did you separate from her?

[fol. 285] A. Right here in Memphis. She left me.

Q. Left you in Memphis?

A. Yes, sir.

Q. When did she leave you in Memphis?

A. That's what I can't tell you. I think it was in the fall of 1927.

Q. Did you sue her for divorce?

A. Yes, sir, later on.

Q. Where did you sue her?

A. In Helena.

Q. Why didn't you sue her here?

A. I left and went back to Helena right away. The Company sent me there.

Q. You filed one divorce bill in which you charged that she left you in Phillips County, Arkansas?

A. No, sir.

Q. You didn't do that?

A. No, sir. She left me here in Memphis.

Q. How many divorce bills did you file against that woman?

A. Two I believe.

Q. When you filed that first divorce bill were you telling the court under oath that she had left you?

A. I ain't told the court under oath nothing.

Q. Did you take an oath of any kind when that bill was filed?

A. In which suit?

Q. The first suit?

A. No, not in the first suit.

Q. You say she left you here in Memphis, Tennessee?

[fol. 286] A. Yes, sir.

Q. I want to show you a petition here and ask you whether that petition shows your name. This is dated the 27th day of February, 1928.

A. (Examines papers) That looks like it.

Q. I will ask you if at that time, this bill for divorce wasn't filed on February 27, 1928? (Hands witness paper).

A. That's when it was filed.

Q. I will ask you if you made this statement in that bill, "Comes the plaintiff and for his cause of action against the defendant states, that he and the defendant were lawfully married on the 27th day of February, 1926, in Phillips County, Arkansas where they lived together as husband

and wife until the first day of November, 1926, when the defendant deserted the plaintiff without any cause on his part and since that time has filed and refused to return to him as his wife?"

A. That is right, what you have read.

Q. Then at the time you filed that bill you charged that you lived with her in Phillips County Arkansas until the first day of November, 1926, when she deserted you?

A. We didn't live in Phillips County at that time.

Q. I want you to take this and read it?

A. You read it.

Q. Why didn't you tell the truth in that bill? That was your divorce bill?

A. I told the man and it isn't my fault that he didn't put it in.

Q. You told the man?

[fol. 287] A. Yes, sir.

Q. I will ask you if, subsequent to the time that this bill was filed, and this bill shows it was filed on February 27, 1928, if on the 4th day of June, 1928, you didn't make a statement before a Notary Public in which you said this: "Saline Fayard and I were lawfully married on the 27th day of February, 1926, in Phillips County, Arkansas, where we lived together as husband and wife until the 1st day of November, 1926, when my wife deserted me without any reason whatever and she has since that time failed and refused to return to me as my wife?" Do you remember that?

A. She didn't leave me there.

Q. That's what this says. Read it.

A. You read it.

Q. I don't want you to take my word for it.

A. (Examines paper) Yes, that's what it says.

Q. And you swore to it?

A. I don't know; I don't remember.

Q. Look at it and see if you didn't swear to it, Mr. Ashcraft. Read that and see if a Notary Public didn't take your oath at that time? This was taken before a Notary Public named Lula May Williams. "My commission expires."

A. My signature is not supposed to be on there.

Q. No, but it shows your oath was taken?

A. I suppose it is.

Q. At that time you swore—I want to give you all the time you want to explain anything you want to—this bill

was filed on February 27, 1928 and sworn to by you; "Sworn and subscribed to before me this 27th day of February, [fol. 288] 1928." and your name signed?

A. Yes, my name is signed.

Q. On February 27, 1928, you swore, at the time of the filing of this bill, that your wife had deserted you the first day of November, 1926 in Phillips County, Arkansas?

A. He didn't tell me that; that's—

Q. I am asking you whether this bill says that?

A. This says that.

Q. Then several months after that, on the 4th day of June, 1928, or about that time, you made this statement before a Notary Public, in which you at that time said—

A. I don't remember; that's too far back.

Q. But your signature is on it?

A. Yes sir.

General Gerber: We want to introduce this bill, and I might say to the Court that it has been properly authenticated under the Act of Congress and we want to introduce it as an exhibit to this witness' testimony.

The Court: Would you like to see it, Mr. Bickers?

Mr. Bickers: Yes, sir. We object to it for the reason that it isn't germane to the issues in this lawsuit and can't possibly help anyone in arriving at the guilt or innocence of this defendant.

The Court: Your objection is overruled. However, you have a right to examine this bill.

Mr. Bickers: I don't care anything about it.

(Exhibit #1—cross—Ashcraft received in evidence.)

Q. The bill shows that you married Saline Fayard on February 27, 1926; is that right? As a matter of fact I [fol. 289] want to show you this marriage license. Is that the marriage license?

A. I think so.

Q. That shows the date of February 27, 1926. There can be no question that you married her?

A. That should speak for itself.

Q. Mr. Ashcraft, I want you to tell this jury how long you lived with Saline Fayard?

A. You are asking me something I can't tell you.

Q. This bill which you file says she lived with you until the 1st of November, 1926. Is that right?

A. It was after the 26-h when she left me here in Memphis.

Q. I want you to think now, and tell this jury how many years it was after you married this woman that she left you in Memphis?

A. I can set here from now on and can't tell you.

Q. After you filed your divorce bill over in Arkansas, did you live with her any more after that?

A. No, sir.

Q. Why, Mr. Ashcraft, don't you know that while this bill was pending over there in Arkansas—I want you to look at this paper and tell us—if in the Helena Arkansas "World" issue of May 13, 1928, there wasn't a statement in that paper: "Mrs. E. E. Ashcraft of Bay St. Louis, Miss. is in Helena for an indefinite stay visiting her husband, who is with Hogan Construction Company?"

A. (Examines newspapers) That's in there but she wasn't visiting me.

Q. I want you to tell the jury whether she was there?

A. She was in Helena, but not visiting me.

[fol. 290] Q. Who was she visiting?

A. I don't know. She come there to get a car.

Q. How long was she there?

A. I don't know. She come out to the job where I was working and told me she was going to ship the car back to Bay St. Louis and I gave her the car.

Q. And this newspaper article which I read is not correct?

A. That's not right; she wasn't visiting me.

Q. On the divorce bill filed in 1928, you didn't get the divorce?

A. No, sir.

Q. That suit was dismissed?

A. Yes sir.

Q. I want you show you here—I will say that this is properly authenticated under the Act of Congress—and order which reads: "In the Phillips Chancery Court, July term, 1928. E. E. Ashcraft, number 6216 vs Saline Ashcraft. On this day this cause is dismissed by agreement of the parties herein."

A. I didn't know nothing about that.

Q. "On this day this cause is dismissed by agreement of the parties herein". What is meant by that?

A. I don't know.

Q. But the suit was dismissed?

A. Yes, sir.

Q. When did you file another divorce bill against Saline Fayard?

Mr. Bickers: Your Honor understand that I am objecting to all this?

[fol. 291] A. Not very long afterwards.

Q. Why was this first suit dismissed, Mr. Ashcraft?

A. I want to explain that.

Q. Go ahead.

A. Mr. Sheffield was the attorney in the case, and rumor gets around somehow, and someone told me that someone had called Sheffield and told him to dismiss the charge. I was later told that she had paid Sheffield more money than I did to get him to dismiss it.

Q. Tell the jury who told you that?

A. Different people.

Q. Give the name of one of the different ones?

A. Let me think a while and I'll tell you. It was a fellow that worked for the light and power company down there.

Q. Give the jury his name?

A. If I can think of it I will. He ran for Mayor of West Helena at one time and I am trying to think of his name. I don't recall it but I will try to think.

Q. You are trying to make a crook out of Sheffield?

A. No.

Q. You were told your wife had given him more money?

A. That's what I heard.

Q. And you can't tell us who told you?

A. No, sir.

Q. Mr. Ashcraft, after this suit was dismissed on February 27, 1928, you filed another divorce bill against this same woman?

A. Yes, sir.

Q. That was on May 31, 1929. I want to ask you if in this complaint at that particular time you made this state-[fol. 292] ment: "That the complainant and the defendant were married on the 27th day of February, 1926, and lived together as husband and wife until about July 30, 1926." Read that paragraph.

A. That says that but the date is wrong.

Q. The date is wrong?

A. Yes, sir.

Q. What date should it have been?

A. It should have been sometime after 1927.

Q. But it does say that in the bill?

A. Yes sir.

Q. Let's see if we understand each other. In the first bill you filed, you say she deserted you on November 1, 1926, in Phillips County, Arkansas. In this next bill it says you lived together as husband and wife until about July 30, 1926. How can you account for the discrepancies in those dates?

A. That's an error somehow.

Q. This bill here was filed on May 31, 1929?

A. That's what it says.

Q. Later on, you made an affidavit, as required by the laws of Arkansas. I will ask you if this is your signature?

A. (Examines paper) Yes, that looks like it.

Q. I will ask you if at that time you made affidavit to this: "E. E. Ashcraft, being first duly sworn as a witness in said cause, deposes and states as follows: My name is E. E. Ashcraft; I am the plaintiff in this suit; I am married to the defendant; I was married to the defendant on the 27th day of February, 1926 and lived with her as husband and wife until about the 30th day of July, 1926." Did you swear to that or not?

A. I signed it.

Q. And you said in this bill that you lived with her until the 30th day of July, 1926, and in the suit you filed before that time you said you lived with her until November 1, 1926?

A. No, I lived with her longer than that.

Q. Well, can you tell us about that?

A. It was after 1927.

Q. You are telling the jury that you lived with her after July 30, 1926 and that you lived with her after November 1, 1926?

A. Sure.

Q. Why do these bills charge that she left you on November 1st and July 30th.

A. I don't never remember them being read out to me.

Q. You were sworn and you signed your name?

A. I see my name.

Q. Aren't you particular about what you swear to?

A. Yes, but I am ignorant about the first rule of law.

General Gerber: We want to introduce these bills. They have been duly certified according to the Act of Congress.

(Exhibits — received in evidence.)

Q. Your second wife, Miss Fayard, was a school teacher?

A. Yes, sir.

Q. She taught school in Bay St. Louis, Miss.?

A. Yes, sir.

Q. And you undertook to get a divorce from her without her knowing anything about it?

[fol. 294] A. I didn't know whether she knowed anything about it.

Q. Don't you know she came up there while this bill was pending in 1928 and lived with you for some period of time and that you subsequently dismissed the first divorce bill?

A. I didn't live with her.

Q. Mr. Ashcraft, when did you marry Saline Fayard?

Mr. Bickers: I want to ask the jury to go out.

The Court: All right. Take the jury out.

(Jury retires.)

Jury out.

The Court: It is close to adjourning time.

General Gerber: Lets settle this before we quit. I want to find out what his objection is.

The Court: State your objection.

Mr. Bickers: My proposition is, and I object on the ground that under the law General Gerber in a case of this kind is not permitted to inquire into this man's marital relations—this man's marriage to Saline Fayard. I say that he can't say a word about this. They are presumed to have been married and it is a collateral matter, and I have the authorities.

General Gerber: You object to him saying when he was married?

The Court: Just a minute. His objection has been stated in the record. Are you gentlemen clear on the point in issue?

Mr. Bickers: That is, he is estopped from about that.

Mr. McTighe: In order to keep the record correct, I am joining in that objection, on the ground that just as soon [fol. 295] as his answer is made that he married this lady, and says when it was, that is a collateral matter and General

Gerber is bound by his answer and can't ask him any other question.

The Court: We will recess until 2:00 o'clock.

(Adjournment.)

(Argument on motion to exclude reference to marriage of Ashcraft to Saline Fayard, citing cases.)

The Court: The court is of the opinion, Mr. Bickers, that those cases are not controlling of the point in question here. The Court is of the opinion that anything touching on that marriage relation is competent and the State has a right to inquire into it. Your objection will be overruled.

Mr. Bickers: Note my exception for Mr. Ashcraft.

Mr. McTighe: I note an exception for Ware.

The Court: Bring in the jury.

Jury in.

E. E. ASHCRAFT resumed the stand.

Cross-examination.

Continued by General Gerber:

Q. Mr. Ashcraft, in your statement, attached to the divorce bill that was filed on February 27, 1928, your sworn statement, it is alleged that "Saline Fayard and I were married on the 27th day of September, 1926, in Phillips County, Arkansas."

A. That's what it says; we were——

Q. Why did you put that in?

[fol. 296] A. I didn't put it in; I——

Q. Then why——

Mr. Bickers: Just a minute, General. I object to this question because he has been interrogated about that very same proposition at least three times and has answered it.

The Court: Objection overruled.

Q. That is your signature?

A. Yes, sir.

Q. Will you tell the jury why you signed your name to a sworn statement in which you said that you and Saline Fayard were married in Phillips County, Arkansas?

A. I don't remember that I ever read that.

Q. You signed it?

A. Sure, it looks like my signature.

Q. And you swore to it?

A. Yes.

The Court: I don't believe that marriage license has been introduced.

(Exhibit # — cross-Ashcraft (marriage license) received in evidence.)

General Gerber: I want to pass this newspaper article to the jury.

Mr. Bickers: That's clearly objectionable—a newspaper clipping of a paper from some other State.

The Court: Objection overruled.

Mr. Bickers: Note my exception.

(Jury examines newspaper clipping.)

Q. Mr. Ashcraft, I want you to tell the jury when you married your third wife, Zelma Ida Ashcraft.

A. Pine Bluff, Arkansas, sometime in 1929—summer of 1929.

Q. Give the date in the summer.

[fol. 297] A. I can't give the date. I think it was August.

Q. Try and think and see if you can remember.

A. I can't remember the exact date.

Q. You say you married her in Pine Bluff?

A. Yes, sir.

Q. Don't you know you didn't marry her in Pine Bluff?

A. I know I did.

Q. Don't you know that the records of Jefferson County, Arkansas show that there was no such marriage license issued over there?

A. These was supposed to have been.

Q. I want to show you, properly certified under the Acts of Congress, this certificate of the County and Probate Court, Clerk of Jefferson County, Arkansas: "I, L. T. Sally, Clerk of the County and Probate Court of Jefferson County, Arkansas hereby certify that I am the duly qualified and elected clerk of said court of the County and State aforesaid, and as such am custodian of the marriage records of said County. That I have examined such marriage records from 1926 to date and do not find any marriage license issued to E. E. Ashcraft and Zelma Ballentine, nor any record from

1926 to date. This 15th day of September, 1941, L. T. Sally."

A. That's what it says.

General Gerber: We want to introduce that as an exhibit to his cross examination.

(Exhibit #8—Ashcraft—Cross—received in evidence.)

Q. Mr. Ashcraft, we asked you about this last November?

A. Yes, sir.

[fol. 298] Q. You have had nearly a year in which to show us that you married her in Pine Bluff?

A. Mr. Rhem was checking into that.

Mr. Bickers: That's purely argumentative.

The Court: Objection overruled.

Q. Mr. Bickers has been your lawyer for some time?

A. A short time.

Q. How long?

A. I don't know the exact time.

Q. Tell us about how long?

A. Three or four or five months I guess.

Q. And he has had ample time to check the records in Pine Bluff to tell us whether you were married or not?

A. Yes, sir.

Q. You haven't got them here?

A. Not unless Mr. Rhem got them.

Q. You and the deceased Zelma Ida Ashcraft lived in Arkansas how long?

A. I wouldn't begin to estimate that. I was on different jobs and we would be over here some months and then go back to Arkansas on a job.

Q. Try to think how long you lived in Arkansas after you married her in Pine Bluff?

A. That's a question I couldn't answer.

Q. When did you come to Memphis?

A. About five years ago.

[fol. 299] Q. When did you move out on Stanton Road?

A. I would say a couple of years.

Q. Your wife, Zelma Ida Ashcraft was a very nervous woman?

A. She was a little nervous, yes.

Q. She had been under Dr. McQuiston's care for several years?

A. Not what you would call under his care.

Q. He prescribed bromides for her?

A. I couldn't say about that, I don't know.

Q. She was constantly taking medicine?

A. Not constantly, but I would say half the time.

Q. Her condition was such that she couldn't sleep and it was necessary that she take amytal?

A. No, she had been taking amytals only a short time; I would say 3 or 4 months.

Q. Didn't you tell us on your direct examination that she had been taking amytal a year before her death?

A. I don't remember.

Q. Didn't you tell Mr. Bickers that on direct examination?

A. I don't remember that.

Q. But you say she had been taking them how long?

A. I would say eight or nine months.

Q. You say 8 or 9, and you just said 3 or 4 months.

A. I wouldn't get right down to the month.

Q. When did she start taking amytal?

A. I don't know.

Q. I'm going to give you a chance to tell us that?

A. If I stayed here from now on I couldn't tell you that definitely.

Q. I want you to tell us approximately how long you have [fol. 300] known that she was taking amytal?

Mr. Bickers: I understand your Honor's ruling—

The Court: He has already stated that he can't tell.

Mr. Bickers: He said that three times.

Q. You knew on the morning following the night she was murdered that she had taken amytal?

A. I know she said—

Q. I am not asking you what she said. You know of your own person- knowledge that on the night before she was murdered the following morning, that she had taken amytal?

A. I can't say I do. I couldn't say I had ever seen her taken one.

Q. Didn't you tell us on the previous trial that sometimes she would take as many as three or four amytal tablets before she would go to sleep?

A. I don't remember that.

Q. You saw this little crushed box we found in the car?

A. Yes, sir.

Q. Where did she get that?

A. Mrs. Rommel can tell you that. She had it when she came back from her house.

Q. You saw it?

A. I saw it.

Q. When did she come back from Mississippi?

A. Well, that was about a few weeks before she made this trip home.

Q. I want you to think and tell us when she went to Mississippi?

A. I told you a few weeks.

Q. You say you know something about a trip she took [fol. 301] home. When did she come back from Mississippi?

A. I wouldn't attempt to give the date.

Q. I show you a box that has been introduced as exhibit #1 to Mr. Becker's testimony. Tell us when you saw that box when she came back from Mississippi?

A. A day or so after she got back.

Q. Tell us about when she got back?

A. I can't do that. I told you it was three or four weeks before she made this trip, to the best of my knowledge.

Q. When did she take this trip?

A. She was supposed to take it the 5th of June.

Q. You mean it was three or four weeks before that?

A. To the best of my knowledge.

Q. That's the time you saw this box that she brought back from Mississippi with her?

A. Yes, sir.

Q. You and your wife both had been patients of Dr. McQuiston?

A. He treated me one time for flu.

Q. That was in 1941?

A. I believe it was in the winter.

Q. He also treated your wife for influenza?

A. Yes, sir.

Q. And had been your family doctor for some time?

A. He had been her doctor. He didn't treat me but once.

Q. He was your doctor?

A. He waited on me then.

Q. He had had no trouble with you?

A. No, sir.

Q. You had no trouble with him?

A. Not that I know of.

Q. Mr. Ashcraft, your wife you say was supposed to have [fol. 302] left on a trip on the early morning of June 5, 1941, and you told the jury she got up about 3 o'clock?

A. That's right.

Q. And you prepared her some coffee and grape fruit juice?

A. That's right.

Q. And she stood up and drank that?

A. Yes, sir.

Q. And she got in the car and drove off?

A. That's right.

Q. On the 5th of June what time did you get home?

A. I don't know. To the best of my recollection we quit work around 5:30 and I rode part of the way back with Bill Turner. It was close to 6 o'clock.

Q. What time did you get off the day before that?

A. About 7 o'clock.

Q. How did you get home that night?

A. Drove my car home.

Q. So there will be no misunderstanding between us, on the night of June 4th you drove your car home and you got there about 7 o'clock?

A. That's to the best of my knowledge.

Q. I want you to remember.

A. That's what I remember.

Q. And you drove your car home on the night of June 4, 1941, and on the evening of June 5 you got off sometime about 5:30 and got home about six?

A. Somewhere along there.

Q. Bill Turner drove on that night?

A. Drove me part of the way.

[fol. 303] Q. You didn't have your car?

A. No, sir.

Q. When you got home you found some deputy sheriffs in your house?

A. Yes, sir.

Q. You found Mr. Becker there?

A. I don't know whether he was there right then or not; I think he come in after we was in the house. There was two or three come in.

Q. Don't you know he was in your house?

A. I imagine he come in shortly after.

Q. Wasn't he at your house on that particular night?

A. What particular night?

Q. After you got home wasn't he in your house?

A. Yes, sir.

Q. Matteer was in your house?

A. Yes, sir.

Q. Mr. Key was there?

A. I can't remember him but I remember Matteer and two of three other fellows there.

Q. Mr. Carlin, the undertaker was at your house?

A. I believe he was.

Q. At that time Mr. Becker talked to you, didn't he?

A. He said a few words to me. I don't recall what they were.

Q. Did he ask you any questions at that time?

A. I imagine he did.

Q. I want you to tell us what he asked you?

A. In regard to where Cora Taylor lived.

Q. I want to ask you if at that time Mr. Becker didn't ask you what time your wife left that morning?

[fol. 304] A. Somebody asked me that.

Q. And wasn't your reply to that question: "Why, has she been robbed? Have you found the bank books?"

A. No, sir, not right then. I told him when he asked me about them.

Q. Go right ahead. What did you say?

A. I told him she got up at 3 and left at 3:30. About the bank books, I did ask him if she had been robbed and some one asked me how much money she had on her and I told them and he said she didn't have no money and didn't have no bank books on her.

Q. You told them at that particular time that she had \$32.00 when she left?

A. Fifty two or fifty three dollars.

Q. You say she had \$32 and you gave her \$20.00?

A. That's right.

Q. I want you to tell the jury now why it was that you had to give her \$20 if she had this chamois bag with two hundred dollars in it?

A. Because we were setting that money aside and we were going to do without before spending that money.

Q. You say she had \$200 and you had \$200, too?

A. Yes, sir.

Q. Tell the jury why you didn't put that money in the bank, that \$400.00 as you had all of the other money you had?

A. Just like I told you.

Q. I want you to tell the jury!

A. We were going to check that \$600.00 out to pay for the bath room fixtures and a septic tank and electric pump because we had no water and we would have to have an electric [fol. 305] pump *pump* put on it.

Q. You haven't answered my question. I want you to tell this jury why, if you and your wife had \$200 apiece, you carried it around in your pockets? You had two bank accounts and you didn't put that money in the bank?

A. Because we never did put the car money in the bank.

Q. Just answer my question.

A. I want to explain it to the jury.

Q. Go ahead.

A. Gentlemen of the jury, in 1941 my wife had five one-hundred-dollar bills and I had two or three on me.

Q. There wasn't any witness testified to that at the last trial?

A. No.

Q. Mr. Ashcraft, why didn't you at that particular time ask these deputy sheriffs where your wife was found and how she was murdered?

A. They told me it was on Raleigh Road in the slough.

Q. Why didn't you ask them to take you to the slough?

A. Matteer told me that—

Q. Why—

Mr. Bickers: Just a minute. He is trying to explain.

The Court: You may ask your question.

Mr. Bickers: Just a moment. He is making an explanation.

A. I didn't have time.

Q. Why didn't you ask these deputies to take you out there?

A. That's what I'm trying to explain, because Matteer asked me if I knew where this maid lived and I told him [fol. 306] I would show him the street.

Q. Why didn't you tell him you wanted to go to the slough and see where your wife was murdered?

A. I was supposed to take orders from him.

Q. Were you under arrest?

A. No, sir.

Q. They were simply talking to you about the murder of your wife?

A. That's right.

Q. Those officers were trying to find out the facts concerning the murder of your wife?

A. Yes, sir.

Q. Why didn't you tell them you wanted to go out to the slough to see where your wife was murdered?

A. I was supposed to do what they told me to. I tried to cooperate with them.

Q. So you went over to where Cora Taylor was supposed to live and she wasn't at home?

A. Yes, sir.

Q. And then they took you to Collins Undertaking establishment?

A. Yes, sir.

Q. And there you saw your wife?

A. Yes, sir.

Q. Your wife at that time was wearing this dress? (Indicating).

A. That's right.

Q. And at the time when you got to Collins, the buttons were all buttoned up?

[fol. 307] A. The best I remember there was one unbuttoned.

Q. Which one?

A. Next to the top button.

Q. Indicate the button?

A. That button. (indicating on dress)

Q. The middle button?

A. To the best I remember.

Q. Mr. Ashcraft, you didn't testify to that at the last trial?

A. I wasn't asked nothing about the dress at the last trial.

Q. You didn't make any such statement at the last trial?

A. No, sir.

Q. And you were in the court room when the man from the undertaking establishment and Mr. Becker and others testified about the condition of that dress at Collins?

A. Yes, sir.

Q. And this is the first time you have said one thing about this button being unbuttoned?

A. The best I remember I believe it was unbuttoned.

Q. Did you see this pin (indicating) at that time?

A. Yes, sir.

Q. Show the jury where the pin was on the dress at that time?

A. It looked like it was about right there (pointing to place on dress) That's the best I can place it.

Q. And in your presence at that time these gentlemen opened up—took that pin off and unbuttoned that dress?

A. Yes, sir.

Q. There was no bag there?

A. They didn't find it in my presence.

Q. After you got through at Collins you went down to the jail?

[fol. 308] A. That's right.

Q. And they talked to you for some hours?

A. Yes sir.

Q. They also talked to Cora Taylor?

A. I believe they said they did. I think I saw her in that room.

Q. You told them at that time that Cora Taylor was going with some negro by the name of Plummer?

A. I told them I thought his name was that.

Q. You also told them about a negro named Kimbrough being around your house?

A. No, I didn't tell them his name. I told them there were two negroes who come there and got some old chickens we were going to sell out and two negroes got them as I was ba-king out of the driveway.

Q. They sent out and got Plummer and Kimbrough and Cora Taylor?

A. I didn't see the negro men.

Q. You saw Cora here that night?

A. Yes, sir.

Q. They talked to you that night upstairs until about two o'clock.

A. Something like that.

Q. You were interested in solving the murder of your wife?

A. Yes, anybody would be.

Q. And you were interested in cooperating with the officers about that?

A. Yes, sir.

[fol. 309] Q. And they asked you a lot of questions at that time?

A. Yes, sir.

Q. Was there any objection on your part to talking to those officers on the 5th floor that night?

A. The first night?

Q. Yes.

A. No, sir.

Q. You saw no objection to staying up there with them until 2 o'clock.

A. No, they were trying to find out if I had any idea about who did it.

Q. They were just asking you a lot of questions trying to develop some clue that would lead to the person who had allegedly murdered your wife?

A. Yes sir.

Q. At that time you told them about the circumstances under which your wife had left the house?

A. Yes, sir.

Q. You told Mr. Becker that she got up around 3 o'clock; that you fixed the coffee and grapefruit juice and that she took an amytal tablet?

A. No, I didn't tell him she took amytals. She said she had a headache and if it continued on the road she would stop and get her some anacins—not amytal. Amytal is for producing sleep.

Q. Don't you know that at that very time she had some empirin tablets?

A. No, I don't know.

Q. You know that was found in her purse?

A. I have seen that box.

[fol. 310] Q. Don't you know that box with empirin tablets was found at the scene where her pocketbook was turned out? Don't you know that to be a fact?

A. No, I didn't know she had taken them.

Q. So your testimony now is that you didn't tell Mr. Becker that before she left that morning she took an amytal tablet?

A. No, I didn't tell him that.

Q. Did you tell Mr. Becker that that time there was something wrong with your car, that the radiator was leaking; that water got on the spark plugs and that she had a hard time getting the car started that morning?

A. No, sir, I didn't say that to him. I want to explain about that, too. Gentlemen, when I had anti-freeze in the car, the radiator was leaking and when I started it, it would miss until it got warmed up and evaporated this water.

But Monday or Tuesday of the week before, I had drained the anti-freeze out and put some permotex and shellac and put the connection back on and filled it up with water and it didn't leak.

Q. You didn't tell Mr. Becker that the condition of the car was such that when your wife came out into the yard and started it, she had to let it run a while to get it going good?

A. No, sir.

Q. Don't you know that you made that statement to him and in making that statement was to leave the impression that somebody could jump on that car and hold her up and rob her?

A. No, sir.

Q. Didn't you make that statement for the purpose of [fol. 311] trying to make it appear that the car must have stopped and somebody probably while the car was stopped, after water got on the spark plugs, jumped on the car and robbed her?

A. No, sir, before I fixed it, water would get in the spark plugs before you started it. After you got the car running, it was all right. After I drained it, it didn't leak.

Q. That just didn't happen?

A. No, sir.

Q. That question about the amyral didn't happen?

A. No, sir.

Q. The question about the automobile didn't happen?

A. No, sir.

Q. They talked to you until 2 o'clock in the morning and they they went out to your house?

A. Yes sir.

Q. They took you home?

A. Yes sir.

Q. They asked you at that time to come back down to the jail about 3?

A. I believe that's the time.

Q. On this night when they talked to you, they talked to you in the same room that they were talking to you on Saturday night?

A. Yes, sir.

Q. On Friday evening they took you up to that same room and talked to you thirty minutes?

A. Year sir.

Q. On Saturday morning you came down here with Mr. Campbell of Collins, and with Mr. Pearson, the brother of the deceased Zelma Ida Ashcraft?

[fol. 312] A. Yes sir.

Q. And at that time you wanted to find out whether the body could be buried in Adolphus, Kentucky?

A. Yes sir.

Q. Did Mr. Becker tell you at that time that the body could be buried anywhere, but they wanted you to stay around, that you were the last person who had seen her alive, and they wanted you to stay around?

A. Yes sir.

Q. Mr. Campbell had the insurance policies at that time?

A. Yes sir.

Q. What did he have the insurance policies for?

A. He told me if we were going to have her buried, he wanted me to let them have charge.

Q. Let who?

A. Collins.

Q. Why did he have the insurance policies?

A. He was going to get them cashed to take care of the funeral expenses.

Q. Why didn't you let the policies alone and pay the undertaker out of this money you had in the banks?

A. I didn't have the books.

Q. Did you need the books to draw money out of the \$600.00 commercial account?

A. I didn't know.

Q. Why didn't you go — the bank and ask?

A. I just didn't do it.

Q. You didn't go to the bank at all?

A. No, sir.

Q. You were under the impression at that time that in [fol. 313] order to get the money out of the bank you had to have the bank books?

A. As far as I know.

Q. As far as you knew at that time, you would have had to have the bank books in order to get the money out?

A. If I wanted to go and draw it personally, yes.

Q. They talked to you for a little while on that Saturday morning?

A. Yes, sir.

Q. What did you do on the Monday morning following June 5th?

A. I didn't do anything.

Q. Stay at home?

A. Yes, sir, they asked me to stay around.

Q. Did you go out any time Monday?

A. Not that I recall, no.

Q. Did you stay home Monday night?

A. Yes sir.

Q. Where did you go on Tuesday?

A. I don't recall going any place. I might have gone to the store.

Q. Just stayed home?

A. I was waiting for a call from the officers.

Q. You wanted to cooperate with them?

A. Yes sir.

Q. Where did you go Wednesday?

A. No place.

Q. On Thursday you called Mr. Becker and asked him to come out there?

[fol. 314] A. I couldn't say for sure but I called him and asked him to come out there.

Q. And when he came out there you showed him two dresses and told him you didn't think they were your wife's dresses?

A. I told him I knowed they wasn't.

Q. And they were Cora Taylor's dresses?

A. Yes sir.

Q. At that particular time you told Mr. Becker that you had been mistaken about the amyta?

A. No sir.

Q. That instead of taking the amyta tablets before she left home, she took them before she went to sleep that night?

A. No, sir.

Q. Don't you know the only reason you called Mr. Becker to your home that Thursday was to make that statement to him about the amyta?

A. No, I called him about these dresses.

Q. At that time he asked you a number of questions about your past life and you told him you had been married previously?

A. I believe I did.

Q. Didn't you tell him you had been married to Saline Fayard?

A. I might have. I told him that one time.

Q. Why didn't you tell him you had also been married to this woman in Little Rock?

A. He asked me how many times I had been married and I told him three.

Q. Don't you know that the first time we ever heard of this marriage to this woman in Little Rock was at the last trial?

A. It wasn't the last time I told him about it. It might [fol. 315] have been then you heard about it.

Q. Just look at the jury, Mr. Ashcraft, they came out to your house and at that particular time you told them you had found a watch out there?

A. I told him Miss Hightower found it.

Q. On that Thursday when you called them to your house didn't you say you had found this watch?

A. I told them Miss Hightower found it. They had told me to look around and see if I could find anything suspicious and the next morning Miss Hightower was looking around and she called me and said "look here" and it was laying in the chest drawer.

Q. Did you think that was suspicious?

A. I couldn't figure how it got there.

Q. They brought you home Friday morning early?

A. Yes sir.

Q. And you say when Miss Nancy Hightower found that watch, it looked suspicious to you?

A. Like I said I didn't know how it got there.

Q. What morning was it that she brought it to your attention?

A. I thought it was Thursday. I wouldn't say for sure; I am not going to make a statement positively because I don't know.

Q. Could you tell us under what circumstances Miss Nancy Hightower found this watch to make it look suspicious?

Mr. Bickers: He has asked that witness the question four times. He has said he can't say the exact time.

A. I don't know the exact time.

The Court: Objection sustained. He says he doesn't know.

[fol. 316] Q. You told George Becker on that Thursday when you phoned him to come out there and he came out and

talked to you about the dresses, you told him that you had found that watch in that drawer, or that Miss Hightower had found it?

A. Yes sir.

Q. You told him there was something suspicious about the watch being there?

A. I told him I didn't know how it got there.

Q. Did you tell us a minute ago that you thought it looked suspicious?

A. No, sir, I don't think I said that. I think I said I didn't know how it got there.

Q. Didn't you say it looked suspicious?

A. It looked funny.

Q. Did you say it looked suspicious? Yes or no?

A. I might have said that; I don't remember saying it.

Q. You stayed home on Friday?

A. Yes sir.

Q. They brought you here again to the 5th floor?

A. Yes sir.

Q. They took you in the same room that they had talked to you on the evening after your wife's body was found?

A. Yes sir.

Q. The same room?

A. Yes sir.

Q. They talked to you for sometime about the condition of that automobile; that you had told them the automobile leaked water and it was hard to start and they were trying to get you to explain that at that time?

[fol. 317] A. I explained it.

Q. Didn't they talk to you about your car after they brought you down here on June 14th?

A. He said that it looked funny that it hadn't leaked none since he had it and I explained that to him.

Q. Why was it they asked you about the condition of the car at that time if you hadn't told them about it leaking at the time your wife left that morning?

A. I don't know why, but he asked me was the car in good shape and I told him as far as I knew it was and I related how I had drained it and fixed it so it wouldn't leak.

Q. They told you at that time that you had told them the car was hard to start on that morning and that they had made an examination of it and couldn't find anything wrong with it?

A. They told me that.

Q. Will you tell the jury why they told you that?

A. That's what I don't know.

Q. And they said to you at that particular time: "Mr. Ashcraft, we want you to tell us why it was that you told us she took the amytal before she left the house and now you tell us she took them before she went to bed?" Did they talk to you about that?

A. Yes, but I ain't told him that.

Q. T-ll the jury why they talked to you about amytal being taken any time unless you had told them something about amytal?

A. I'm not any mind reader but I never told them she taken any sleeping tablets for a headache.

[fol. 318] Q. You know they will put you to sleep?

A. I don't know; I never taken one.

Q. They talked to you at that time about this pouch and told you that there was nothing to indicate that anybody had torn this dress or that anybody had taken any pouch with \$200 out?

A. They said they didn't find anything that indicated that.

Q. They talked to you for sometime?

A. Yes sir.

Q. From the time you were brought in until Mr. Ezzell started talking to you, I want you to tell the jury whether anybody mistreated or struck or abused you in any way?

A. The only way was they cussed and abused me about not being able to explain about the radiator, and I had told—

Q. You say Ezzell talked to you for several hours?

A. Yes sir.

Q. What was it that Ezzell did, from the time he started talking to you until the time Mr. Becker and Mr. Battle came back, that was abusive?

A. He never did strike me.

Q. Tell us what he did?

A. He tried to get me to give him a statement. I would tell him I had already told him all I knew.

Q. I am asking you what he did from the time he started to talking to you in the way of abuse or mistreatment or inflicting any violence on you in any way from the time he started talking to you until Battle and Becker came back?

A. I don't know what you would call violence but rough talking.

Q. Becker and Battle came back and talked to you for some time?

[fol. 319] A. Yes sir.

Q. You told the jury here that Mr. Battle told you they were going to put you in a chair and let water drop down on your head and something about you being a hard-headed son of a bitch?

A. Yes, sir, that's what he said.

Q. Mr. Battle told you that?

A. Yes sir.

Q. Did you tell us that on the last trial?

A. No, sir.

Q. Why didn't you tell us that at the last trial?

A. I just didn't tell it.

Q. Didn't you say on direct examination that you were physically exhausted?

A. I was exhausted.

Q. Don't you know that when this trial came up here you had been in jail since June 14th until November?

A. That's right.

Q. You had been doing nothing during that period but lying around until the trial came on?

A. I had been staying around.

Q. All you had on your mind was this trial in which you were to be tried for the murder of your wife? Why didn't you tell us about that at the last trial?

A. I just didn't.

Q. And that was something that was really ou-standing?

A. If he had done it it would have been a terrible thing.

Q. That was a very outstanding thing and something that [fol. 320] impressed itself on your mind?

A. I should say so.

Q. But you didn't tell the jury about it at the last trial?

A. No, sir.

Q. And that didn't happen?

A. Yes, it did.

Q. Did anybody hang up a bucket of water and allow it to drip on your head?

A. He didn't do it but he told me that.

Q. You testified before Judge Pleasants in the absence of the jury. Did you make any statement to Judge Pleasants in the absence of the jury that Mr. Battle offered you a drink of whiskey?

A. I did at the other trial.

Q. Why didn't you tell Judge Pleasants about that?

A. I can't think of everything.

Q. Mr. Ashcraft, you say the next thing that happened was that Mr. Key came in there and rubbed the picture of your dead wife across your face and placed the picture on your shoulder and slapped a cigarette out of your mouth and threw your package of cigarettes in the waste basket?

A. Yes, sir, that's a fact.

Q. Where did you get the cigarettes you were rolling that morning—

A. That was can of half-and-half I had in my pocket.

Q. Why didn't he take those away from you?

A. I guess he didn't know I had them.

Q. Did you have a coat on?

A. Yes sir.

[fol. 321] Q. Don't you know you didn't have a coat on?

A. I know I did.

Q. Don't you know it was so hot—

A. It was hot but I had my coat on.

Q. Now about this boy Tackett that you told Ezzell you had been riding around, did you say anything about him at the last trial?

A. I think I did.

Q. That is his first name?

A. I don't know.

Q. Where does he live?

A. I don't know that.

Q. Where is he now?

A. Working somewhere in Mississippi.

Q. You didn't have him here at the last trial?

A. No, sir.

Q. You told them that Ware had been riding with you and they brought him in and he made a confession?

A. I don't know what they made him do.

Q. They brought the negro up here?

A. Yes, sir.

Q. You went out there and identified Ware?

A. Yes, sir.

Q. You say after they brought him up here they took you in the theft squad office?

A. Yes, sir.

Q. You stayed there how long?

A. I could not even guess the time. I stayed there until after Dr. McQuiston come. It was after daylight.

[fol. 322] Q. How do you know it was daylight?

A. All the windows was open.

Q. I thought you said when Ezzell came in to talk to you they closed all the windows up?

A. I said in that room they closed the windows.

Q. What kept you from seeing the sunlight?

A. The light shining down on me and I wasn't facing the windows.

Q. You could look around?

A. I looked at the men questioning me.

Q. Don't you know those are long windows and that they have no shades?

A. Yes, sir.

Q. What kept you from seeing anything at all?

A. The bright light shining down in my face; I couldn't tell whether it was daylight or dark.

Q. You made a statement to Dr. McQuiston, in his presence, that you had hired Ware to make away with your wife?

A. No.

Q. What did you say to Dr. McQuiston?

A. I said "Good morning."

Q. Can you tell us why Dr. McQuiston would make such a statement as he did?

A. I cannot.

Q. You made the statement in the presence of Dr. McQuiston that you had offered your wife a property settlement, and she would not accept it?

A. I did not.

Q. Will you tell the jury why Dr. McQuiston told that if you didn't make the statement?

[fol. 323] A. No, I couldn't tell why.

Q. From the time that Ware was brought in until the time that Dr. McQuiston came and talked to you, did anybody talk to you about this case?

A. I believe Ezzell did.

Q. How long?

A. I don't know. He talked to me a little bit and then Jayroe came in.

Q. Jayroe talked to you?

A. He came in after Ezzell left.

Q. Did he talk to you about the case?

A. No, sir.

Q. How long did you sit in there, without anybody talking?

A. Not very long.

Q. From the time Dr. McQuiston came over, when was the next time that Becker or Jayroe or Ezzell had anything to do about talking to you?

A. Right after Dr. McQuiston left.

Q. Do you remember seeing Mr. Waldauer up there?

A. I said I don't remember seeing him.

Q. Didn't you tell Judge Pleasants, in the absence of the jury that he wasn't there?

A. If he was there I didn't see him.

Q. Don't you remember making the statement to Judge Pleasants, in the absence of the jury, that he wasn't there?

A. I don't remember if I made that or not. If he was behind me I couldn't see behind me.

[fol. 324] Q. State to the jury whether Henry Waldauer wasn't there and whether you were asked questions and made answers that were taken down by him in shorthand?

A. No, sir.

Q. That didn't happen?

A. If he was taking shorthand I didn't see him.

Q. I hand you a statement and ask you to look at it?

A. (examines papers) This is the same one I read the other day.

Q. In the absence of the jury?

A. Yes, sir.

Q. I want you to state to the jury whether there are any answers in that statement that you made?

A. Not that I recall; I know—

Q. I want you to tell this jury—

Mr. Bickers: Just a minute. He wants to say something.

General Gerber: Let him go ahead.

The Court: Let him finish.

A. The only thing I remember is I did tell them about Ware riding with me back and forth from work.

Q. I am going to ask you now to look at that paper and read it through carefully. We have plenty of time. I want you to do that and tell the jury if there is a single answer in that statement which you made.

The Court: We will take a short recess.

(Recess.)

Q. Have you had an opportunity to read it?

A. Yes, sir.

Q. Mr. Ashcraft, you told Judge Pleasants, in the absence of the jury, that the first time you ever saw Henry Waldauer [fol. 325] was when he testified in the last case?

Mr. Bickers: If your Honor please, at this time I move the Court to instruct the Jury that they can't consider any statement made out of the presence and in the presence of your Honor on the motion which we had before your Honor. I object to this line of questioning and move the court to instruct the jury that any cross-examination with respect to what took place in their absence may not be considered by them.

The Court: The motion will be denied.

Mr. Bickers: Note my exception.

Q. Didn't you make the statement to Judge Pleasants in the absence of the jury that the first time you ever saw Henry Waldauer was when he testified at the last trial?

A. That's the first time I ever saw him to know him.

Q. You didn't see him up there taking shorthand notes?

A. No, sir.

Q. Tell the jury now, since you have read this statement, if there are any questions asked up there when Mr. Waldauer was in the room?

A. I don't know whether or not he was there.

Q. Are there any questions asked there that anybody took down and answers that you gave?

A. There may be some questions in here that I might have made, or some answers, but it was made before this thing here—

Q. I am not asking you about anything made before. I am asking you were they made at the time Henry Waldauer was taking this statement from you?

A. I don't know whether he taken it.

[fol. 326] Q. And you didn't make any statement to him?

A. I didn't make any statement to him and I didn't make this statement to no one.

Q. None of the questions asked or the answers made in that statement were asked you in his presence or taken down by him?

A. No, sir, I never made any statement to him.

Q. I want you to tell this jury now, so there won't be any misunderstanding, whether there was any stenographer—

Henry Waldauer or anybody else—taking down your statement in the homicide room on the 5th floor, questions and answers, on that early morning of June 16, 1941?

A. The only statements I saw wrote was notes passed between Becker and Key and them fellows.

Q. When?

A. They done that Sunday night and Monday morning.

Q. I will ask you if, while you were in the homicide room, sitting in that chair, this happened:

“Statement of E. E. Ashcraft, age 44, residence 3520 Stanton Road, Memphis, Tennessee, charged with the murder of his wife, Mrs. Zelma Ida Ashcraft, on Thursday, June 5, 1941, made at the county jail on Monday, June 16, 1941, at 7:12 A. M. to deputy sheriff George A. Becker, in the presence of Sheriff Guy Joyner, Assistant Attorney General Preston Battle, and Robert Ezzell, Investigator for the Attorney General's office; Henry S. Waldauer, court reporter.” Did that happen in your presence?

A. Not that I recall.

Q. Will you tell us whether it happened? Did it happen?

[fol. 327] A. No.

Q. Did this happen?

“Q. Mr. Ashcraft, you are in jail, charged with the murder of your wife, Zelma Ida Ashcraft, on the early morning of June 5, 1941, and it is my duty as an officer to tell you that any statement you might make to me about this murder must be freely and voluntarily made, and it can and will be used in Court against you. Knowing that, are you willing to give me a truthful statement about how your wife was killed?

A. Yes sir.”

Q. Did you make that answer to that question?

A. No, sir.

Q. And this question:

“Q. Mr. Ashcraft, had you been planning the death of your wife?

A. I had been planning to do something like that since along in May, 1941.”

Q. Was that question asked you and did you make that answer?

A. No, sir.

Q. All right.

Q. Who did you get to do this killing for you?

A. Well, this colored boy—what is his name—Tom Ware”

Q. Did that happen?

A. No sir.

Q. No question of any kind was asked you in the presence of Henry Waldauer and none of these answers were given in his presence?

A. No, sir.

Q. And you didn't make this statement?

[fol. 328]. A. This is not my statement.

Q. I want you to tell the jury this: you say they kept you up there from sometime Saturday afternoon, June 14, 1941, until sometime early Monday morning, during which time they slapped a cigarette out of your mouth; that they took your cigarettes; that they denied you food and water and threatened to put a bucket of water over your head and let it drip down on your head; that they cursed and threatened you, and yet you didn't make any statement?

A. I have never made no statement.

Q. And this statement is not true?

A. It isn't my statement.

Q. And you made no statement at that time to Waldauer?

A. No, sir.

Q. Do you remember seeing Mr. Nelson Castle up there?

A. If he was there I don't recall it.

Q. Do you recall seeing Mr. Everett Pidgeon up there?

A. No, sir; there were three or four in the room.

Mr. Bickers: What?

A. Three or four people in the room. They could have been standing behind me and I didn't see them.

Q. I will ask you if at any time a copy of this statement was handed to you and read back by Mr. Becker?

A. There was some letter that — handed to me.

Q. When is the first time you have told me that?

A. I am telling that now.

[fol. 329] Q. You have denied, from the time we started in this case, that this statement was ever made or read by you?

A. It wasn't read by me.

Q. Did anybody ever hand you this statement and did you read it?

A. No, I couldn't read it.

Q. Was it handed to you?

A. Mr. Becker handed me some kind of statement but I don't know whether that was it or not. I don't know what was in it.

Q. When is the first time you have told us this?

A. I'm telling it now.

Q. You have denied throughout this thing that you ever saw this statement or ever had it read back to you?

A. I saw the statement that Mr. Rhem had.

Q. I am asking you what happened on the early morning of June 16. You have told us that you never had a copy of that statement and it was never read back to you?

A. Becker handed me some kind of statement.

Q. And you are telling us that now for the first time?

A. I'm telling it now.

Q. And you just didn't make any statement?

A. I never made that statement.

Q. You never made any statement that a stenographer took down.

A. If he took any statement down he was sitting behind me and I didn't see him.

Q. I believe you told the jury that the officers said if you didn't make a statement they were going to make up a statement and convict you on that?

A. That's what they told me.

[fol. 330] Q. And this is the statement they made up on you?

A. I reckon that's the one.

General Gerber: That's all.

Redirect examination.

By Mr. Bickers:

Q. Mr. Ashcraft, were you in the last war?

A. World war, yes.

Q. Did you go to France?

A. Yes, sir.

Q. Mr. Ashcraft, I omitted asking you this: I think your wife had contemplated trips to Kentucky previous to June 5, 1941?

A. You mean other trips?

Q. Yes. Before she started on this trip June 5, 1941, had she made trips before?

A. Yes sir.

General Gerber: We object to this repetition.

The Court: Objection overruled.

Q. State whether or not your wife had contemplated taking a trip shortly before June 5th?

A. Yes sir.

Q. How long before?

A. I don't know exactly, but it was a week or two before that, and the nurses were having a graduation, and Miss Hightower's mother came down and she was with us, and this young lady, I think her name was Mildred Waller, came to our house and stayed a few days and my wife had [fol. 331] to delay her trip on that account.

Q. Your wife had contemplated going on a trip at that time?

A. That's right.

Mr. Bickers: That's all.

Recross-examination.

By Mr. McTighe:

Q. General Gerber asked you about people being in the room and you not seeing them. What is the condition of your eyes Mr. Ashcraft?

A. Well, I lost two nights sleep and naturally my eyes would be bloodshot.

Q. I see you wear glasses?

A. Yes, I have a lot of trouble with them.

Q. How long have you been wearing glasses?

A. Since 1926 or 1925.

Mr. McTighe: I think that's all.

Juror: You told Mr. McTighe, Mr. Ashcraft, that your eyes were tired from lack of sleep for two nights?

A. Yes sir.

Juror: How do you know you had lost two nights sleep?

A. After I had been taken over in that other office. I know I did.

Juror: You knew you had been there Saturday and Sunday night?

A. Well, when they tell you that—

Juror: When did they tell you that?

A. After they brought Ware in and after Dr. McQuiston had been there.

General Gerber: Who told you that?

[fol. 332] A. Bob Ezzell.

~~Recross-examination.~~

By General Gerber:

Q. You never said anything about that before?

A. No sir.

Q. And you have maintained all along that you didn't know how long you were up there?

A. That's right.

Q. Mr. Ashcraft, you operated this drag line?

A. Yes, sir.

Q. And you have to have pretty good eyes to operate a drag line?

A. No, sir, you don't.

Q. You don't have to have good eyesight to operate a drag line?

A. If you have a big bucket.

Q. You are supposed to see what you are doing?

A. Yes sir.

Q. And you have to have steady nerves?

A. Yes sir, you have to have steady nerves.

Juror: When you were in the room on the 5th floor was the chair you were sitting in backed against the wall?

A. I would say it was about that far (illustrating) from the wall.

Juror: Did you ask any of the officers if you might move back?

A. No sir.

Juror: Was your wife in the habit of always wearing her [fol. 333] watch?

A. No, she made one trip to Helena and left it.

Juror: The watch wasn't a piece of jewelry that she always wore on her wrist?

A. No, sir.

Juror: Did you assist your wife in putting her grip and things like that in the car on the morning that she left?

A. When she got her powder and things like that in her grip and closed her grip up, I got the grip and hat like she told me and she said—

General Gerber: Just a minute.

A. I put her things in the car. She handed me a black flashlight and I put that in the glove compartment of the car.

Juror: Was it light enough to see anything without a flashlight?

A. Yes sir. She just taken that along. They don't have electric lights where her mother lived.

Juror: You couldn't see anyone in the yard?

A. I could see plumb over the yard.

Juror: Did she back the car out herself?

A. Yes sir.

Juror: It was what time?

A. 3:30 A. M.

Juror: Did you hear any birds or any other indication of dawn?

A. No, I didn't listen for any.

Juror: Have you visited the scene of the crime?

A. I never had any transportation to get there. I told [fol. 334] Mr. Becker that I would like to go out there if they would take me out and I didn't go out by myself because in case that this ring might be found that I would want the law to see that I didn't have the ring and hadn't put up a fake story.

General Gerber: When is the first time you have told us that.

A. Just now.

Juror: Do you have a garage out there?

A. Yes sir, we keep coal and kindling in there.

Juror: The car was outside?

A. Yes sir.

Juror: You went out and told your wife good bye?

A. Yes sir.

Juror: Then you went in the house?

A. Yes sir.

General Gerber (Continuing):

Q. I want to show you a picture introduced as a exhibit to Mr. Becker's testimony. That's a picture of your house?

A. Yes sir.

Q. This is your driveway? (Indicating on picture.)

A. Yes sir.

Q. Put an "X" mark where your car was parked in the driveway that morning?

A. (Witness marks "X" on photoragraph.)

Q. Show us where you- car was parked. Make a big "X"
Mr. Ashcraft?

A. Right there (indicating).

Q. The car was parked in your driveway even with the walk that went into the house?

A. That's right.

[fol. 335] Juror: General Gerber, could we go up to the room on the 5th floor?

The Court: No, sir.

Mr. McTighe: Couldn't that be done by consent of counsel?

The Court: No, sir.

Juror: What time was it that you visited Collins Funeral Home?

A. That would be hard to say exactly. We left my place and went down to this maid's house and went to Collins from there.

Juror: What I am concerned about is why you would be so concerned about going to Cora Taylor's.

A. It wasn't me; I wasn't concerned. The deputies wanted to do that.

Juror: What made you suspicion Tom Ware yourself?

A. I didn't suspicion him.

Juror: Did you give his name to the police?

A. I gave them his name. Let me explain that. When they asked me who had rode with me from the job to my home I said nobody. Then they asked me if anybody had rode with me at all and I told them Tackett had rode from the Bellevue Pumping Station to the carline and he asked me where Tackett was and I told them he had a job in Mississippi; I also told them a negro boy named Tom Ware had rode from the bowling alley job on Cleveland to a point on Cheisea but I didn't know the name of the street.

Another Juror: May I ask a question?

The Court: Yes, sir.

Juror: Mrs. Ashcraft, have you ever suffered from loss of memory or amnesia?

A. If I did I don't know about it; not that I can recall.

[fol. 336] Juror: Have you ever had any trouble with your memory?

A. The only trouble I have had I can't remember names and dates good

Q. (General Gerber continuing) Mr. Ashcraft, if you didn't know where Ware lived, how did you happen to point out his house to them?

A. I pointed out the wrong house first.

Q. Don't you know that there are only two houses there; that this (indicating on map) is the first house and this is the second?

A. I didn't know that. It was dark.

Q. Don't you know you said he lived in the second house, and isn't this the second house?

A. I didn't know that until we got there.

General Gerber: That's all.

(Witness excused.)

JOHN WARE alias Tom Ware (Colored) a defendant having been sworn, testified as follows:

Direct examination.

By Mr. McTighe:

Q. I want you to speak out loud, John, and tell the truth.

A. That's what I'm going to do.

Q. You are accused here, as you have heard it said, of the murder of a white woman by the name of Mrs. Ashcraft. I will ask you if you are guilty or not guilty?

A. Not guilty.

Q. John, where were you born?

A. I was born in Tennessee out in Bartlett on Mr. Jessie Appling's plantation.

[fol. 337] Q. Where were you raised?

A. Friar's Point, Miss.

Q. Have you had much or little learning?

A. Very little learning.

Q. How long were you when you were arrested?

A. I was 20 but I am 21 since I been in jail.

Q. You have been in jail ever since June, 1941?

A. Yes sir, every day.

Q. John, when did you come to Memphis from Mississippi?

A. I come back in 1937 but I didn't stay long. I went back.

Q. When did you come back again?

A. I think it was 1940. Off and on I would go back to Mississippi. When my mother and father moved back it was 1937 during the high water, I went back down there.

Q. The high water ran you out?

A. Yes, sir; I helped my sister make a crop.

Q. John——

A. Yes, sir.

Q. When was the first time you ever saw Mr. Johnny Ashcraft?

A. Well, the first time to my knowing that I see Mr. Johnny was over here on Cleveland Street Sears and Roebuck job. I was working over there as a laborer.

Q. Was Mr. Ashcraft working there, too?

A. Yes sir.

Q. Just state to the jury what acquaintanceship you had with Mr. Ashcraft?

A. Well, I didn't have no acquainten-ship with Ashcraft, none at all. The fact of the business was, Mr. Bill Turner was the boss. He was the man hired me.

Q. Tell the jury the first occasion that you rode with Mr. [fol. 338] Johnny?

A. Gentlemen, it was on Wednesday.

Q. How do you remember it was Wednesday?

A. I got paid off.

Q. That was pay day at Hogan's?

A. Yes, sir. I got paid off and it started raining and we worked about an hour and a half, and the bookkeeper issued the checks. It was just a vacant place where we was and I didn't have no way to get out of the rain. Mr. Bill had a pick-up truck and we got under the pick-up truck, that is, these other colored boys, and I didn't have no car fare, nothing but a check, and I asked Mr. Bill Turner which way he goes, and he said "Tom, I go south," and I says "it is raining and——"

Q. Did you have your check at that time?

A. Yes sir, my check.

Q. Had you cashed it?

A. No, sir, there wasn't no place there I could cash it.

Q. Go ahead.

A. Mr. Bill says "Tom, I go south," and I said "I would like to get a way home."

General Gerber: If the court please I don't want to take the attitude of interrupting, but this is all hearsay.

The Court: Objection sustained.

Q. John, don't repeat any conversations you had with Mr. Turner out there.

A. Don't say nothing he said?

Q. Just tell if you were directed to Mr. Ashcraft?

A. Yes, sir, I was directed to Mr. Johnny by Mr. Turner.

Q. Did you have a conversation with Mr. Ashcraft?

{fol. 339} A. Yes, sir, I did.

Q. What was that conversation?

A. Well, sir, he said if I got some of the mud off me I could ride.

Q. Did you ride with him?

A. Yes sir, I got some mud off me and got in the car and it was raining, and I got out at Oriole and Chelsea. The only thing said was about how it was raining.

Q. During that time that you rode with Mr. Ashcraft, was anything said about him having a wife?

A. No, sir; he didn't tell me he had no wife.

Q. Did you have any conversation with him about any white woman?

A. No, sir. I didn't have anything to say. Just talked about how it was raining.

Q. Did Mr. Ashcraft offer you any money at that time?

A. No, sir, I offered to pay him seven cents for bringing me home, but he said I didn't make enough money to pay anybody.

Q. You got out at Chelsea and Oriole?

A. Yes, sir, a little while before we got there, between Oriole and Sunset, which my mother lived on. I said to Mr. Johnny "I can get off right here at this bridge, boss" and I said "I won't get wet."

Q. You heard the testimony about your house being the second house. Which house do you live in?

A. I lives in the fourth house. The first house, it's brown; there is a blue house and a little white house and I lives in the fourth house off Chelsea.

Q. Now when was the next time you had occasion to ride with Mr. Ashcraft.

{fol. 340} A. I can't state what anybody said?

Q. You can say what Mr. Ashcraft told you.

A. He said "What time do you got to work in the morning, boy?" I said I went to work about 8 o'clock. He said I'm due along here around 7:20 or 7:30" and he said "you can ride with me if you be here," and I got up late the next morning and I had went on to the carline—

Q. How far is it from your place to the carline?

A. About half a mile. I was waiting there; there is a little old shelter there where people catches cars; there was eight or ten people waiting there and I didn't know none.

Q. Did Mr. Ashcraft come along?

A. Yes, sir, he passed along and I was waiting, you know, facing Chelsea, and he picked me up.

Q. On your way to work that morning did Mr. Ashcraft mention anything to you about his wife?

A. No, sir, not that morning and not any other morning. I never heard anything like that until I was brought to jail.

Q. Did he offer you any money?

A. No, sir.

Q. Did he ever mention any white woman to you?

A. No, sir, no woman and no man either.

Q. How many other times did you ride with Mr. Ashcraft?

A. I believe I rode back home with him one time.

Q. And that was the limit of your riding with him?

A. Yes, sir.

Q. During any of these times did Mr. Ashcraft ever say anything to you about killing a white woman?

A. No, sir, he did not, not that time and not no time. He ain't never told me nothing like that.

[fol. 341] Q. Did you know Mr. Ashcraft had a wife?

A. No, sir; he didn't tell me.

Q. When was the next time you saw Mr. Ashcraft?

A. Well; the next time was when I saw him in the jail.

Q. Did you see him out there the night you were arrested?

A. It wasn't no lights on in that house and I couldn't tell Mr. Ashcraft from an-body else; just a bunch of white men.

Q. Where were you in the house when they came out there?

A. I was in bed, me and my wife and my brother-in-law. I hadn't saw him since I left Mississippi.

Q. Were you sleeping between your wife and brother-in-law?

A. Yes, sir, that's correct.

Q. What did those men say to you that night?

A. Told me to get up out of bed.

Q. Did you do that?

A. Yes, sir, and put on my clothes.

Q. Did you try to run?

A. No, sir. What am I going to run for?

Q. After you got dressed, what happened?

A. Well, when I got out of bed, it was dark and I didn't know that these trousers was hanging on the chair. We didn't have nothing but just a chair and a table and bed and I had some trousers hanging up by the wall, but it being dark I asked these men could I reach up and get these pants. They asked, "what's the matter with them on the chair?" and I got those on the chair.

Q. How did you feel about these men coming out there and making you get dressed?

A. Well, I was scared awful bad. I know I hadn't done nothing and I didn't see what I could be arrested for and [fol. 342] I didn't even know they were officers.

Q. After you got dressed what happened?

A. After I got dressed I was handcuffed, in the house. No sooner do they put the handcuffs on me than I was ordered out of the house. I was coming down the steps and maybe three or four steps down, I would be sure how many, one of the men, I don't know which one, knocked me in the head as I was coming down the steps.

Q. Do you know which one hit you?

A. No, sir.

Q. Did you know any of these men?

A. No, sir.

Q. Were any threats made against you?

A. After I was hit on the head I dropped to my knees and a man caught me by the pants and carried me to the car.

Q. How did you feel about that time?

A. I felt bad and scared and I have never felt like that before in my life because I never had anything like that to happen to me.

Q. John, after you got in the car and on the way down to the jail, was there any conversation by anybody?

A. No, sir, only after I come down Chelsea between Reed Brothers and the Mid-South, I asked them what they had me for and the question I got back I would find out, and I did.

Q. After you got up here where did they take you?

A. We come in a driveway to this building and I was placed where there was some bars.

Q. Had you ever been in this jail before in your life?

A. No, sir.

[fol. 343] Q. Had you ever been in any jail before?

A. Brownsville calaboose.

Q. What for?

A. Disturbing the peace.

Q. Who were you tried before?

A. Carried before a justice of the Peace.

Q. Is that the only time you have been in jail in your life?

A. Yes, sir; that didn't amount to much. There were some other boys in that, too, me and another colored boy and a white boy.

Q. You say they put you some place where there were some bars?

A. Yes sir, and I stayed there. I reckon about three or four minutes and I was placed on the elevator with a bunch of men and I was carried I reckon to the 5th floor of this building and there was a room with chairs and a table.

Q. After you got in there did you see Mr. Ashcraft?

A. After we got there I did.

Q. Tell the jury what conversation took place when you were brought into the room with Mr. Ashcraft?

A. After I was brought in there with Mr. Ashcraft, Mr. Becker and Mr. Ezzell asked me did I know that man, and I told them "Yes, sir, thats Mr. Johnny."

Q. At that time, did you know Mr. Johnny's last name?

A. No, sir.

Q. How did you happen to — him as Mr. Johnny?

A. I heard Mr. Bill call his name.

Q. What happened after you said "That's Mr. Johnny"?

A. Mr. Becker told me that was Mr. Johnny Ashcraft, or some "craft" like that.

Q. Did Mr. Ashcraft leave or did they take him out?

[fol. 344] A. They took him out.

Q. What happened then?

A. Mr. Becker told me that I had done killed his wife.

Q. What did you tell him?

A. I told him I didn't.

Q. Tell what happened?

A. Mr. Becker told me I had killed Mr. Johnny's wife and I told him I hadn't and Mr. Ezzell come in and I was given a chair and I was sitting down and Mr. Becker told me I had killed Mr. Johnny's wife and I told him "no, sir, I didn't," and he told me I did, he said he had the proof on me and I must come on and tell him.

Q. At the time you were there did anybody curse or threaten you?

A. I was cursed and I wasn't threatened but I was hit.

Q. Tell the jury about that.

A. Mr. Becker asked me didn't I kill this woman and I told him "no, sir," and that's when he hit me.

Q. Just tell what happened, John? He hit you with what?

A. With his hand. I was talking and telling him I didn't do it and this young gentlemen, Mr. Ezzell was there, and Mr. Becker hit me. They was both talking to me and it is quite natural I can't talk to two mens at once.

Q. Both were asking you questions at the same time?

A. Yes sir.

Q. Did anybody curse you at that time?

A. Yes, sir, Mr. Becker did.

Q. What did he call you?

A. He called me a God damned son of a bitch.

Q. What else did he say to you?

A. Well he talked to me trying to get me to tell him I [fol. 345] killed that man's wife and I told him I didn't. I don't know how long I stayed in that room at that time, but I was brought out of that room by Mr. Ezzell and Mr. Jayroe.

Q. John, when you were living in Mississippi, did you ever hear of a mob?

A. I remember one.

Q. I will ask you do you know what happens to negroes that kill white women?

A. Yes, sir, and that's what they told me.

Q. Were you thinking about that when you were talking to these white men?

A. Yes, sir.

General Gerber: We object to the leading questions. This is an intelligent witness and——

The Court: Objection sustained.

Q. John——

A. Yes, sir.

Q. You say Mr. Jayroe and Mr. Ezzell took you out of the room?

A. Yes sir.

Q. Where did you go then?

A. I was placed on an elevator and I dropped down and there was a little old tin concern; it wasn't wide; I couldn't stand up in it. It is got some wood in it. It looked like a car box door.

Q. You were brought to the 5th floor?

A. Brought to the 4th floor.

Q. Describe that in your own words.

A. Well, it is an iron concern and it has got some car box [fol. 346] doors like, looks like that, and it was dark when I was asked to get off the elevator, and it has chicken wire.

Q. Was it high enough for you to stand up in?

A. No, sir.

Q. About how long was it?

A. About from the corner of that jury—may I get down?

Q. Yes, get down.

A. (witness illustrates) From here to there. It may be a little longer, and maybe shorter.

Q. Show about how high it is?

A. If I was standing up straight I couldn't ordinarily stand up straight.

Q. John, can you tell us about how long you were in that room?

A. In that dungeon?

Q. Yes.

A. No, sir; I couldn't tell what time it was but I stayed in there a pretty good while.

Q. Then what happened?

A. After I was put in there I went to crying.

Q. Go ahead?

A. In a little while the same two that carried me there come back and got me.

Q. What conversation did you have with the gentlemen that came back?

A. They told me if I didn't tell Mr. Jayroe and Mr. Ezzell—one of them told me—I won't be sure which—that if I didn't tell Mr. Becker that I did the killing of this white lady, they would turn me over to the mob.

[fol. 347] Q. What effect did that have on you?

A. I was pretty scared and that scared me instantly. Mr. Jayroe, he told me, "you know what happens to a negro when he kills a white woman?" and I said "yes, sir, but I haven't killed nobody," and they said "it's left with you." He told me if I said that nobody would hurt me and they wouldn't let the mob get me.

Q. Then what did you say?

A. I'll tell you what you all want me to tell if you won't let nobody hurt me." and they said "come on, tell us."

Q. Who did they tell you to tell it to?

A. Mr. Becker.

Q. Where was Mr. Becker when you started talking to him?

A. In the homicide room on the 5th floor.

Q. Did you have any conversation with Mr. Becker?

A. Yes, sir, and I was standing up and Mr. Ezzell said "come on and tell Mr. Becker what you told us" and I didn't want to tell any wrong reports on myself, and they said "go on and tell him."

Q. Were you cursed or threatened at that time?

A. I had been cursed, and Mr. Becker asked me how did I kill this woman and I didn't know what to tell him, and he asked me did I kill this woman and I said "yes, sir" and he asked me how did I kill her and I said "I shot her," and he said "you lying son of a bitch, you know that woman wasn't shot; you know you knocked that woman in the head."

Q. Shortly after that did you notice Mr. Waldauer, the man writing in a little book like this gentleman here is writing?

A. Shortly after that he came; I saw him and I remember [fol. 348] he was writing like this gentleman. (indicating court reporter)

Q. That statement they introduced the other day which has those questions and answers, tell us who made those answers—if you did. Were those questions asked you?

A. I didn't answer those questions like that. Mr. Becker or one of them would tell me what to say. They would tell me; they would say "say so and so" and I would say it.

Q. Those questions were asked you?

A. Yes sir.

Q. How did you answer them?

A. They would say "is so and so right" and I would say "yes, sir."

Q. As they asked the questions to you, you would answer by saying "yes sir?"

A. Absolutely.

Q. When they asked you did you kill that woman, did you say "yes, sir" while Mr. Waldauer was there?

A. Yes, sir, I later did. I didn't want to say "yes sir".

Q. Did you kill that woman, John?

A. No, sir, Mr. McTighe.

Q. Do you know who did?

A.. No, sir.

Q. After that where did you go?

A. I stayed in that room.

Q. Where was Mr. Becker?

A. Mr. Becker stayed and asked different things and he stepped out one time and wasn't gone long and Mr. Ezzell come in and he give me a cigarette. I asked him and he give me one.

[fol. 349] Q. About how long was that before they brought you some papers and asked you to sign them?

A. Well, I didn't know what time it was.

Q. After this statement was taken by Mr. Waldauer, where did you stay?

A. In the room on the 5th floor.

Q. Do you remember these men bringing some papers for you to sign?

A. Yes, sir.

Q. Did you want to sign those papers?

A. No, sir, I didn't want to put my name on them.

Q. John, come down and take this tablet and this pencil and writer you- name four or five or six times.

A. Yes, sir. (Witness writes on tablet)

Q. Is that the way you usually sign your name?

A. That's the only way I ever sign it.

Q. When they asked you to sign that statement you told them you couldn't read and write?

A. Yes, sir.

Q. Why did you tell them that?

A. Because I knew what they had made me say wasn't the truth and I figured it was all right if I don't sign my name.

Q. Did you touch the pen?

A. I don't know. I may have. I wouldn't say I did. It has been so long ago, but I must have if they said I did.

Q. If you did touch that pen, was that free and voluntary?

A. No, sir.

Q. When you made the answer of "yes, sir" to any of these statements, was that free and voluntary?

A. No, sir, it wasn't.

[fol. 350] Q. Was that done of your own free will?

A. No, sir.

Q. How long have you been able to write your name?

A. It has been a long time.

General Gerber: I didn't get that.

Mr. McTighe: He said it had been a long time.

Q. I hand you a check dated April 19, 1941, made payable to the order of J. Ware, drawn on the Union Planters National Bank & Trust Company, Memphis, Tennessee, in the amount of \$5.54. Did you ever get that check?

A. Yes sir, I did.

Q. Did you endorse your name on that check?

A. Yes, sir I did.

Q. Here is check dated April 5, 1941, amount \$13.86, made payable to Tom Ware. Did you endorse that check?

A. Yes, sir, I did.

Q. Here is another check of the E. O. Korsmo Construction Company dated April 29, 1941, made payable to the order of Tom Ware, amount \$12.65, signed by L. A. Tvedt. Look at the back and say if you endorsed that check?

A. I did.

Q. Here's another check payable to Tom Ware, Ben Mc. Hogan Construction Company, April 12, 1941. Is your signature on the back thereof and did you sign that?

A. I did.

Q. I hand you another one, check of Korsmo Construction Co. dated 4-23-41, amount \$9.01. Look on the back and see if that is your signature?

A. Yes, sir, that's mine.

[fol. 351] Mr. McTighe: I want to group these and make them Exhibit "A" to his testimony.

General Gerber: No objection.

(Exhibit A—Ware—received in evidence.)

Mr. McTighe: The paper on which he wrote his name, I offer that as exhibit B.

(Exhibit B—Ware—received in evidence.)

Q. You had some checks while you were working on the bowling alley job?

A. Yes, sir.

Q. Is one of them the check you had when you didn't have car fare?

A. That's true.

Mr. McTighe: I want the jury to see these checks and this signature.

(Examination by jury.)

The Court: We will adjourn until 9:30 tomorrow.

Adjournment.

9:30 A. M., October 28th, 1942

JOHN WARE resumed the stand.

Direct examination.

Continued by Mr. McTighe:

Q. John, was there ever any such man as William Stokes?

A. I don't know anything about him.

Q. Did you ever have any money other than the money you made at these various places where you worked?

A. No, sir, I haven't.

Q. John, after the gentlemen questioned you up here in the jail and you touched the pen, did they take you anywhere?

[fol. 352] A. Yes, sir, they carried me to the house where Mr. Ashcraft lived.

Q. Had you ever been there before?

A. No, sir, that's the first time I ever been there in my life.

Q. Did they take you anywhere else?

A. Yes, sir, to a slough of water.

Q. Did you pick up those rocks they showed us?

A. Yes, sir, they made me pick them up.

Q. John, where were you on the night that this woman was supposed to have been killed?

A. I taken sick and was at my mother's home.

Q. Where were you working?

A. Mid-South Concrete Pipe Company.

Q. Did you work there the day before this woman was killed?

A. Yes, sir.

Q. Did you work the day after?

A. Yes sir. I worked two hours.

Q. Where were you the night before you worked the two hours?

A. At my mother's home, sick.

Q. Did you ever leave the house that night?

A. No, sir, I didn't leave until 5 o'clock and I felt better and I got up that morning at 5 o'clock because I was going to work at 7:00 o'clock and I got up and made a fire in the stove.

Q. The evening before you got sick what time did you come home? What time did you get off at the Mid-South?

A. I don't know sir. There was a rush at that time. Sometimes I worked late.

[fol. 353] General Gerber: What?

A. Worked late.

General Gerber.: Before you said that?

The Court: A rush.

A. It was a rush at that time. I couldn't tell what time I would get off.

Q. That night you never left your mother's home?

A. No, sir.

Mr. McTighe: You may take the witness.

Cross-examination.

By General Gerber:

Q. John, where did you say you were born?

A. On Mr. Jessie Appling's plantation, between Bartlett and Ellendale.

Q. Did you ever live around Raleigh?

A. No, sir, never in my life.

Q. How long did you live on Mr. Appling's place after you were born?

A. I don't know, sir.

Q. Were you going to school there?

A. No sir, I didn't go to school at all here.

Q. How far is Mr. Appling's place from Raleigh?

A. I couldn't tell you to save my life.

Q. You have never been to Raleigh?

A. No, sir, not that I know of. If I have I don't know.

Q. As you come from Bartlett to Memphis, don't you have to come through Raleigh?

A. I don't know sir; I don't ever remember coming to Memphis when I was out there.

[fol. 354] Q. As a matter of fact, Raleigh is only a short distance from Bartlett?

A. I imagine so.

Q. If you were going from this house that you were living in on June 5, 1941, on Oriole, out to Bartlett, you would go out Chelsea? You would go out Chelsea to Raleigh Road to Bartlett?

A. Yes, sir, I imagine so.

Q. Where did you go when you left Bartlett?

A. Mississippi.

Q. How old were you when you got to Mississippi?

A. I couldn't tell that.

Q. You went to what point in Mississippi?

A. Friar's Point.

Q. You lived at Friar's point how long?

A. From the time when I moved, when my father moved away from here to Mississippi from out there down to Friar's Point. We stayed down there until 1937.

Q. What were you doing down there?

A. After I grewed up I ploughed for my father.

Q. Plowed for your father?

A. Yes, sir.

Q. Did you go to school down there?

A. I went a little bit. I didn't get far.

Q. How far?

A. Fourth or fifth grade; something like that.

Q. In 1937 what became of you. Did you leave Friar's Point?

A. My father in 1937, it was high water where my father was living at that time; the levee broke and my father [fol. 355] moved away from there to Memphis and I stayed down there. After the water went down my father and

mother was here and I came here but I went back to Mississippi and helped my sister make a crop.

Q. You went back to Friar's Point after 1937?

A. Yes, sir.

Q. How long did you stay there after going back?

A. I stayed down there until my sister moved, the next year.

Q. You stayed down there in 1938?

A. Yes sir.

Q. Where were you in 1939?

A. I don't remember that.

Q. But you do remember that after the flood you went back down and made a crop in 1937 and 1938?

A. Yes sir.

Q. How far is Clarksdale from Friar's Point?

A. They say it is 9 miles but truthfully I couldn't say.

Q. Did you ever go from Friar's Point to Clarksdale to see how far it was?

A. I have been over there, yes sir.

Q. You have been there many times?

A. I went over there occasionally.

Q. Did you ever get in any trouble in Clarksdale, ever been in jailhouse?

A. No, sir, I never was arrested there.

Q. You are sure about that. I want you to think, now. I don't want to hurry you up. I want you to tell this jury whether you were ever in the jailhouse in Clarksdale, Miss.?

[fol. 356] A. If I was I don't remember.

Q. I want to ask you this question and I want you to think before you answer. I want to ask you to tell the jury whether on January 15, 1938, you were not in the police station at Clarksdale, Mississippi—the jail there?

A. I don't remember it.

Q. John, the officers here on this last trial, after the trial they took your finger prints?

A. Before too.

Q. They took them before?

A. Yes, sir.

Q. You didn't tell us anything like that at the last trial?

A. I absolutely told you, sir.

Q. You say they took your finger prints before and after the last trial?

A. Yes, sir.

Q. I want to ask you if your finger prints were not taken in the police station at Clarksdale, Mississippi by Mr. Harlow, the man in charge of the Identification Bureau down there, on January 15, 1938?

A. My finger prints have been taken here, out at DuPont at the powder plant and they was taken in Mississippi. I was in Government work in the government office out from Friar's Point.

Q. What Government office?

A. I don't remember.

Q. Don't you know the only time your finger prints were ever taken in Mississippi, they were taken at the police station in Clarksdale on January 15, 1938?

A. No, sir.

[fol. 357] Q. John, don't you know that to be a fact?

Mr. McTighe: If your Honor please, that's a collateral matter and he is bound by his answer and he can't go into it any further.

The Court: Objection overruled.

Mr. McTighe: Exception.

Q. John, I want to ask you if at that particular time, on January 15, 1938, your finger prints were not taken at Clarksdale in the identification bureau at the police station, and if at that time they didn't ask you to sign your name and you said you couldn't read and write?

A. I don't know anything about that.

Q. I will ask you if you didn't tell Mr. Harlow at that time that you couldn't sign your name?

A. I don't remember that.

Q. Do you say that didn't happen?

A. I say I don't remember it.

Q. You say it didn't happen?

Mr. McTighe: He has answered.

General Gerber: This is cross-examination.

Mr. McTighe: But not four times.

The Court: Objection overruled.

Q. Will you say that didn't happen?

A. I won't say it happened and I won't say it didn't. I don't remember.

Q. John, what were you doing in the Government office in Mississippi when they took your finger prints?

A. Working on the levee.

General Gerber: We ask permission to introduce—well, [fol. 358] it won't be necessary to introduce this now. Just for the purpose of identification we want it marked.

Mr. McTighe: I don't see how it can be introduced; it has not been identified.

The Court: He may identify it as having been the same instrument shown the witness.

(Exhibit #1—Cross—Ware offered in evidence for purpose of identification.)

Q. John, how long did you stay in Mississippi after 1938?

A. I don't know practically the time.

Q. Just approximately the date?

A. Well, I can tell you this; I have lived longer in Mississippi than I have in Tennessee.

Q. John, Mr. McTighe asked you something about some trouble you had in Brownsville. On the last trial didn't you tell us your trouble in Brownsville was that you had hit a man in the head with a rock?

A. No, sir, I told you I didn't do it. I say that now.

Q. They had you for disturbing the peace?

A. Yes, sir. Can I explain that? Out at the place where I was working when I got arrested I was up there on Mr. Parker's truck. Me and a colored boy and a white boy was driving the truck. They stopped on the highway and got a quart of whiskey and he stopped in Brownsville at a service station to get a coke. When we was going up the highway, I was seated in the middle of the truck and there was a flash-light batteries in there and a boy about my own age was coming down the highway in a wagon. This boy threwed them batteries out of the truck and hit this boy on the wagon and later the law overtook us and stopped us.

[fol. 359] Q. Did anybody get hit with a rock?

A. That's the first time I ever heard about a rock.

Q. You were in the jailhouse up there?

A. Yes, sir.

Q. Did they take your finger prints?

A. No, sir.

Q. John—

A. Yes, sir.

Q. When is the first time you ever did any work around Memphis?

A. The first work I did was for Mr. Parker.

Q. Tell us what year that was?

A. I don't know, sir.

Q. Now before you worked for Korsmo on the bowling alley job on Cleveland Street, where did you work?

A. Mr. Parker.

Q. What Parker?

A. Mid-South Concrete Pipe Co.

Q. Who did you work for before that time?

A. I worked for Dupont before that.

Q. When did you work for DuPont?

A. I think it was in 1940. I won't be positive but I'm hitting at it as near as I can.

Q. In 1941 you were working out there on the bowling alley job?

A. Yes, sir.

Q. You met Mr. Ashcraft on that job?

A. Yes, sir.

Q. What was he doing?

A. Driving a pile driver.

Q. What sort of work were you doing?

[fol. 360] A. Working with a shovel as a laborer.

Q. How long did you work on that job?

A. I guess about three weeks, about that.

Q. When did you meet Mr. Ashcraft?

A. I believe that was the last week I made there.

Q. Where did you drive with him that first time.

A. Well, I rode from the job.

Q. What's funny about it.

A. I didn't get the understanding.

Q. Anything you don't understand just ask me?

A. Yes, sir.

Q. Where did you ride from the job?

A. Out Chelsea to Oriole.

Q. That was April of 1941?

A. Yes, sir, I believe it was.

Q. What was said about Mr. Ashcraft taking you back and forth?

A. He said he would be along there in the morning and if I was there I could ride with him.

Q. What time was he supposed to go to work?

A. I don't know, sir.

Q. What time were you supposed to be at work?

A. Eight o'clock.

Q. But when he put you out he said he would pick you up the next morning and take you to work.

A. If I would be there.

Q. And the next morning you went down to the carline and there were several people waiting and Mr. Ashcraft came along?

A. No, sir, I was waiting down under a shed facing Chelsea and he come along.

Q. What did he say to you?

A. He didn't say anything. He stopped and I walked to the car.

[fol. 361] Q. How many people were standing around waiting for the car at that time.

A. I couldn't say how many. Lots of them. It may be ten and it may be five, or eight.

Q. And at that particular time he stopped to pick you up?

A. Yes, sir.

Q. When you got in the car what happened?

A. He told me I could ride.

Q. He had told you you could ride the day before?

A. Yes, sir.

Q. Did he pick up any of those other people waiting for the car?

A. No, sir.

Q. You rode with him to the job and when was the next time you rode with him?

A. I think it was the next day or the next day after that. I just don't remember when it was.

Q. I want you to try to remember, John?

A. I don't remember and I wants to tell the thing right.

Q. You went home with him that evening, and he let you out and told you that he came along there every day and would be glad to pick you up and take you to work?

A. No, sir, he didn't say he would be glad to; he said I could ride with him.

Q. You were out there and there were five or ten people waiting for the car and he came along and stopped and you walked out and got in the car and he told you you could ride with him and you did ride with him?

A. Yes, sir.

Q. Where were you seated in the car?

[fol. 362] A. I don't remember whether I was seated in front or behind.

Q. Don't you remember where you were seated? I want you to think now, and tell the jury.

A. I would rather say I was seated in the front.

Q. I'm not talking about what you would rather say. Tell us whether you sat in front or back?

A. I can't tell you.

The Court: He says he can't remember.

Q. All right. And he picked none of those five or ten people up but only picked you up, and you don't know which seat you rode on?

A. That's right.

Q. Then you went to work and when was the next time you rode with him?

A. I ain't rode with him no more, as far as I remember. It wasn't over three times; it may have been four times.

Q. You told us about two. When was the third time?

A. I don't remember the third time I rode with him.

Q. When was the fourth time you rode with him?

A. I haven't rode with him no fourth time.

Q. Didn't you say three or four times a minute ago.

A. If I did I don't remember.

Q. You say you started riding with him the last week you were on the job. What day of the week was that?

A. It was on Wednesday.

General Gerber: I have a terrible cold and you gentlemen will have to excuse me.

Q. I believe you told Mr. McTighe that the reason you know it was Wednesday was because that was pay day?

[fol. 363] A. That is correct, yes, sir.

Q. Then you rode with him on Thursday?

A. Yes, sir.

Q. Did you work Friday?

A. I don't remember.

Q. How about Saturday?

A. I don't remember.

Q. Did you work there any more after that Thursday morning that you say Mr. Ashcraft brought you to work?

A. I don't remember if I did. The reason I say—

Q. What?

A. I am trying to explain. I got a letter to report out on Union Street for an examination for my military training and I did so.

Q. Did you read that card?

A. It was a piece of white paper; it was in a letter, a piece of white paper I reckon about ten or twelve lines and then

there was a card and I left the card with the doctor's office and he filled this card out.

Q. You had no trouble reading that?

A. Well, my mother told me about it. I don't know if I read it or not.

Q. Did you read that letter?

A. I may could have read some of it.

Q. You may could have?

A. Yes, sir.

Q. When was the third time you rode with Mr. Ashcraft?

A. Like I say a while ago I can't remember.

Q. How long was it after the second time that you rode with him again?

[fol. 364] A. I just can't remember.

Q. Could it have been three weeks after that?

A. I won't say because I don't know.

Q. Could it have been two weeks, or a month?

A. I don't know, sir.

Q. You just don't want to be caught with Mr. Ashcraft in that car at any time during the commission of this crime?

Mr. McTighe: I object to that.

General Gerber: Wait a minute now.

The Court: The objection will be sustained.

Q. John, you were working at the Mid-South Concrete Pipe Company on June 5, 1941?

A. Yes, sir, I was working there in June.

Q. How long did you work there on June 5, 1941?

A. He was putting in all the way from 8 to 9 and some times 12 hours and the last day I worked there I taken sick.

Q. What hours did you put in there on June 5, 1941?

A. I don't remember.

Q. How many hours did you put in on June 5, 1941?

A. I don't remember that.

Q. Don't you know you didn't work on June 7?

A. No, sir.

Q. Did you work June 8th?

A. I can't remember if I did or not.

Q. Don't you know you didn't?

A. No, sir.

Q. Just what do you remember, John?

A. I remember some things but I can't remember every thing.

[fol. 365] Q. John, when was the first time that Mr. Becker or any officers came to your house?

A. It was that night; I don't know what time it was, it was on Sunday night. I was asleep.

Q. What time did you go to bed that night?

A. I don't know sir.

Q. How long had you been in bed when the officers came?

A. I don't know, sir. I was woke up by them.

Q. Up until that time no officer had come to your house and talked to you about the murder of Mrs. Ashcraft?

A. No, sir.

Q. They came out there and had you dress?

A. Yes, sir.

Q. And told you to come on with them?

A. Yes sir, they ordered me out of the house and I did so.

Q. You say they handcuffed you?

A. Yes, sir, that's true.

Q. Don't you know there weren't any handcuffs put on you?

A. I know there was.

Q. You say somebody hit you on the head. Tell the jury who hit you?

A. I don't know, sir. It was dark.

Q. Didn't you say at the last trial that Mr. Ezzell hit you?

A. No, sir, I didn't.

Q. Don't you remember at the last trial saying that Mr. Ezzell hit you in the back of the head?

A. I told them I don't know. It was dark and I don't know who hit me.

Q. Don't you remember that at the last trial we put Mr. [fol. 366] Ezzell on the stand and he denied hitting you?

A. No, sir, I don't remember that.

Q. They put you in the car and you saw Mr. Ashcraft then?

A. I didn't know Mr. Ashcraft from some one else. All I knew it was just a carload of white men.

Q. Would you have known Mr. Ashcraft if you had seen him at that time?

A. I would have known him as Mr. Johnny.

Q. When you got to this building they took you to the fifth floor?

A. Yes, sir.

Q. Was Mr. Johnny there then?

A. Later after I got there I saw him.

Q. How long after you got there?

A. I couldn't say. I may make it too long or too short.

Q. Was it dark or light when you got in this building?

A. Light.

Q. Did you see Mr. Johnny get out of that car?

A. If I did I didn't know him from anybody else. I didn't know him until they asked me who he was on the 5th floor.

Q. You were scared?

A. Absolutely, yes, sir.

Q. And you were wondering why the officers had come out in the dead of night and got you?

A. Yes, sir.

Q. When the officers came out to the house, Mr. Johnny pointed you out and said "this is the man?"

A. All I know is I was told to get out of bed and who pointed at me I don't know.

[fol. 367] Q. Did you come up on the elevator with Mr. Johnny when they got you to the jail?

A. I don't remember whether I did or not.

Q. You were in the office upstairs with Mr. Johnny?

A. Yes, sir.

Q. What did you say to him up there?

A. They asked me do I know this man and I said "Yes, sir, that's Mr. Johnny."

Q. Then you did know him?

A. Yes sir, when he was brought before me.

Q. Where did you tell them you had known him?

A. On the job at Sears and Roebuck.

Q. What else did they ask you about him?

A. They asked me how long I had known him and I told them I had rode with him several times?

Q. You didn't tell us that on direct examination?

I am telling how it happened.

Q. Don't you remember that when you and Mr. Johnny were up in that room they asked you when you had ridden with Mr. Ashcraft last?

A. No, sir I don't.

Q. And didn't you hesitate and stop to study and then didn't Mr. Johnny say "John, don't you remember it was Thursday the 5th of June?"

A. No, sir, he ain't said nothing like that to me.

Q. And didn't you tell the officers at that particular time that you had told Mr. Johnny that if anything ever come of it you were not going to take all the blame?

A. No, sir, I did not.

[fol. 368] Q. You are positive you didn't say that?

A. Yes sir.

Q. These other things, there is some doubt in your mind about them, but you are sure you didn't say that to Mr. Ashcraft?

A. I can't remember other dates but I know I didn't say that.

Q. Then they took Mr. Johnny out of the room?

A. He was just shortly brought into the room and they asked me did I know him and I didn't see him any more until the next day.

Q. When they ask you if you knew Mr. Johnny, was it dark or light at that time.

A. When they showed him to me and I said that's Mr. Johnny?

Q. Was it dark or light outside?

A. Oh, it was dark.

Q. How do you know it was dark?

A. Well, it was night.

Q. Could you look out of the windows and see the daylight?

A. I could after daylight broke.

Q. And after daylight broke you could see through these windows in that room that daylight had broken.

A. Yes sir.

Q. They took Mr. Johnny out of that room and started talkin' to you?

A. Yes sir, Mr. Becker and Mr. Ezzell did.

Q. About how long did they talk to you—Becker and Ezzell?

A. I don't know how long.

[fol. 369] Q. I would like for you to give us an idea.

A. I'll give the best I can; I don't know how long.

Q. Did they talk to you a long time?

A. I don't know.

Q. Did they talk to you an hour?

A. I don't know, sir.

Q. Was it a good while?

A. Yes sir.

Q. What were they talking about during that good while?

A. Tried to get me to say I killed Mr. Johnny's wife.

Q. And you didn't say you killed her?

A. I didn't at that time.

Q. Did anybody hit you in the head at that time?

A. Mr. Becker hit me once at that time.

Q. Who else hit you?

A. Ain't nobody hit me but Mr. Becker.

Q. How many times did he hit you?

A. Once in that room.

Q. John, Mr. Becker hit you at that time and tried to make you say you killed this woman and you were scared to death?

A. I was scared when I was arrested.

Q. You were just as scared as you could be?

A. Yes sir.

Q. Just as frightened as you could get?

A. Yes sir.

Q. And Mr. Becker was cursing and abusing you and he hit you?

A. Yes sir.

Q. And in spite of that you didn't make any admission to Mr. Becker that you had killed this woman?

A. Not at that time. After they told me they was going [fol. 370] to turn me over to a mob, I did. They said "you know what happens to negroes that does something like that."

Q. Who told you to tell the jury anything like that?

A. Nobody told me to.

Q. Are you sure, in the preparation of this defense, somebody didn't tell you to tell the jury that?

A. Ain't nobody told me that.

Q. When they told you they were going to turn you over to a mob, you admitted the killing?

A. I told them if they wouldn't do that, I would admit that I did it.

Q. John, I am going to hand you this statement here that you have previously stated you made. I want you to read that to the jury.

A. (Examines statement.) I can't read it.

Q. You told them that morning that you couldn't read?

A. Yes sir, and I told them I couldn't write.

Q. You told us here the other day in the absence of the jury that you could read.

A. I can read a little bit, but no fancy writing.

Q. Read that if you can.

A. I can't read it, I can maybe made out some words.

Q. Just read what you can.

A. I can make out a few words.

Q. You told them when they handed you that statement that you couldn't read?

A. I told them I couldn't read and write.

A. And they read that statement back to you?

[fol. 371] A. They read something.

Q. Did they read this: did this happen:

"Q. Now, Tom—

A. Yes, sir.

Q. You are in jail, charged with the murder of a white woman by the name of Zelma Ida Ashcraft on the early morning of June 5, 1941; and it is my duty as an officer to tell you that any statement you might make to me about this murder must be freely and voluntarily made, and it can and will be used in court against you. Knowing that, are you willing to give me a truthful statement about how you killed this woman? Are you?

A. Yes sir. I have already done it now."

Will you tell the jury whether that question was asked and whether you made that answer?

A. No, sir, there wasn't no question asked me at all, "do you freely and voluntarily."

Q. Did you say, "Yes sir, I have already done it now?"

A. No, sir.

Q. Mr. Waldauer just made that up?

A. I never did know what Mr. Waldauer was doing.

Q. Didn't you see him writing on a tablet?

A. I seen him scratching on something.

Q. And this next question:

"Q. You say you already done it?"

A. Yes, sir.

Q. Did you kill Mrs. Ashcraft?

A. Me?

[fol. 372] Q. Yes.

A. Yes, sir."

A. I said "me?" because I didn't want to do it. They forced me to do it. They had done told me to say it.

Q. You said that then?

A. They told me what to say.

Q. Are those your words contained in those answers?

A. I don't get an understanding.

Q. When they asked you "did you kill Mrs. Ashcraft" did you say "me?"

A. I said "me?"

Q. And they said "yes," and you said "yes, sir?"

A. I may have said it. I said "yes, sir" to some of the things they asked me.

Q. I am asking about this particular answer. Did you say "yes, sir" there?

A. I said "yes, sir" to everything. I said "yes, sir" to the things they asked me.

Q. This question:

"Question: What did you kill her with?"

Answer: A rock."

Q. Did you make that answer: "a rock?"

A. I did not.

Q. Who made it?

A. I don't know. If I was told to say that I did. If they told me to say anything, I would, but I didn't do no more than they was telling me to do.

Q. I want to ask you if, in the presence of Mr. Waldauer, anybody told you to say "a rock?"

A. Mr. Becker said "don't you know that woman was killed with a rock?" That was the only thing said about a rock.

Q. And you don't remember making that answer, "a rock?"

[fol. 373] A. No, sir.

Q. All right.

"Q. In your own way, I want you to go ahead and tell me all that you know about this killing.

A. Well, the nearest time I knowed him was in I can't get the month. Let me see. This is June?"

Did you say that up there?

A. I don't remember saying anything like that up there. I told them the time I rode with him.

Q. You didn't make that answer?

A. No, sir.

Q. Then Mr. Becker said:

"Q. Yes, this is June.

And you said:

A. What comes before June?"

Did you say that? Did that happen?

A. I know what comes before June.

Q. Did you make that answer?

A. No, sir; I know what comes before June.

Q. Then you were asked, "what was Mr. Ashcraft doing at that time? And did you make this answer: "at the time we were over here by Sears & Roebuck, we were on a pile driver. He was operating the pile driver, and I was working on the pile driver as a laborer. Well, I started to riding with him. Do you want me to tell you how I started to riding with him?" Did you make that statement?

A. No, sir; I never made a day on that pile driver in my life. I didn't work on the pile driver.

Q. Did you say "Do you want me to tell you how I started to riding with him?"

A. I told them I rode with him.

[fol. 374] Q. Did you make that statement?

A. I don't remember the question was asked.

Q. Then the man said "yes" and I want you to tell the jury whether you made this answer:

"Answer: One evening I did not have no street car fare and I was over at Sears Roebuck, and I asked him, 'Which way do you go, boss,' and he said 'I go over to Chelsea,' and I asked him would he let me go with him, and he said yes, and I go over with him, and he said 'I come through here every morning, and I can pick you up on Chelsea,' and he began to pick me up that way; and about the second morning after I was riding with him he asked me about this conversation, he told me about a boy who was a friend of his, and this friend of his had a woman, outside woman—I will tell you like he told me—he had an outside woman, and his wife was coming home, and he wanted to get rid of this woman, because he had tried to make her leave and she would not, and this fellow was giving him \$100.00, and he was going to get somebody—he did not have nerve enough to do it, and he was going to get some help on

it, and he talked to me, and I did not turn him no answer until the fifth or sixth time after he put the question to me."

Q. Did you make that answer to Mr. Waldauer?

A. No, sir, that man didn't tell me nothing about no California.

Q. You didn't make that answer?

A. No, sir, I didn't.

Q. They told you to go ahead, and did you make this answer:

"A. I told him I did not want to do it, and I am telling it to you just like it was, and he said 'this job.' When *when* he first asked me to do it, I never told him I [fol. 375] would, and then later on I told him that I would. He said for me at first to call him out, like I wanted to buy a stove, and I was going to sit on the porch in front, and he was going to call the woman out, and then when they got out there, for me to act like it was a hold-up, and get them both in the automobile, and to do the job that way, and after he had told me about it,—I was to quit work on the job and get another job another place, and then I was to get in touch with him. Now that was during the month of April, I don't remember what day it was, but that is when he was telling me what he wanted done."

Did you make that answer to Mr. Waldauer?

A. No, sir, I did not.

Q. Did you make this answer:

"The day he met me on the street, he taken me on to Oriole Street in his automobile, and he stopped, and he sits down and tells me to hold up my head and don't be looking downhearted, like I am scared, because it is nothing to be done—I am telling it like it was—he said it has to be done now, and if you don't see me any more, he says it will be done then. I rode on out to the drug store and got out of the automobile."

Q. Did you make that statement to Mr. Waldauer?

A. No, sir, I did not.

Q. "What drug store did you get out?" Answer: The colored drug store on Chelsea, and then he came back to my house on Oriole Street the following night at 8 o'clock sharp,

and he asks me to get in the car, and he takes me out to this place, he says me and him will spot the place, and then we [fol. 376] comes back and he puts me out of the automobile, and we sits down on the bridge there on Chelsea and Oriole." Did you make that answer?

A. No, sir. Mr. Becker asked me where I had been that Sunday and I told him I went by this drug store and got me a package of cigarettes.

Q. John, who dictated those answers to Mr. Waldauer?

A. I don't know, sir.

Q. Did you say this: "I sat on the bridge on Chelsea and Oriole, I sat there 15 minutes, and gets off of the bridge and walks down the road two or three times, and then I goes home. I had sat there on the bridge for 15 minutes, and then I gets up and goes to bed. Wednesday night at 1 o'clock he comes to my house and knocks on my door."

A. No, sir, I didn't. Ain't nobody come and knocked on my door. I couldn't have made that statement.

Q. Who dictated that to Waldauer?

A. I don't know.

Q. You were right in the room with Mr. Waldauer?

A. Yes, sir.

Q. Did you hear anybody dictating to him?

A. I don't know, sir.

Q. Did you make this answer:

"Johnny Ashcraft comes out, and he tells me that she will be ready in 15 or 20 minutes, and first he brings out a black hat in a paper bag. Next he brings out a grip, and puts the grip in the car, and then he goes back, and Johnny Ashcraft tells me, he says, "All right now, she will be out in 15 minutes, and don't do any dribbling at it". And he goes back in the house and comes back again, and him and her comes out, and I eases around the car and grabs her, and she hollers, and Johnny Ashcraft tells her, he said, "don't holler; it is two of them, don't holler, it is two of them," and I tells him to get [fol. 377] in the car, and her too, and he asked her, "Will you drive? and she said "Yes, I will drive, and she gets in the car, and he got in the car, and he said "I haven't got any money;" and he asked her if she had any money, and she said "yes," and she said she had \$50.00, and she gave me \$50.00; and so we goes to Chelsea, and on out Jackson—I don't know all of the streets out there, and I get to the spot out there, and I have

them stop the car, and when the car is stopped, he gets out of the car, and she gets out of the car, and walks down the little dirt road, and he comes to me and tells me to make her take off the wrist watch and I takes the wrist watch off and I slips it to him, and I tells the woman that I am going to put her in the river first, and then her husband,—both of them, and she screams and hollers and he grabs her and says, "Let her have it," and I let her have it.

Q. Did you make that statement to Mr. Waldauer?

A. No, sir, I didn't.

Q. Who did?

A. I don't know. I know I didn't.

Q. This question: "What did you do with the \$50.00"

Answer: "I rolled it up and put it in my pocket." Did you make that answer while Mr. Waldauer was writing it down?

A. No, sir, I never did have no fifty dollars.

Q. And this question: "What bills did you pay, who did you pay?" Answer: Let me see. I forgets that now. It was the Federal Clothings Company for one.", did you make that statement?

A. No, sir.

Q. How did they know that you did business with the Federal Clothings Company?

A. Because they asked me where did I get the new pants and I told them the Federal Clothing Company.

Q. Now, while you were up there, Dr. McQuiston came up?

A. I remember that.

Q. Was it daylight when he got there?

[fol. 378] A. Yes, sir.

Q. How could you tell it was day?

A. I could see out the window.

Q. You were in the room in the northwest corner?

A. No, sir, not when he came in.

Q. Did they read a statement to you?

A. Yes, sir.

Q. They read this same statement to you that I have been reading from?

A. I imagine it is.

Q. I don't want what you imagine. Didn't you make your mark on each one of these pages?

A. I didn't make no mark. I touched the pen.

Q. They read this statement back?

A. I reckon that's the one.

Q. Didn't you say in the presence of Dr. McQuiston that you had made that statement?

A. No, sir. He asked me how I had been treated and they had told me what to say if anybody asked me that and I told him I had been treated all right. I thought Dr. McQuiston was an officer. If I had knowed he had come there to see how I was treated I would have told him like I am telling it now.

Q. If you had known who Dr. McQuiston was you would have told him just like you are telling us now?

A. Yes, sir, I would absolutely have told him. I didn't know if he was an officer or a doctor.

Q. He examined you, didn't he?

A. He just looked at me. He didn't put his hand on me. I couldn't judge he was a doctor by him just looking at me.

Q. And you were doing everything they told you to do?

[fol. 379] A. I was saying what they told me to say.

Q. Did they take you out somewhere the following morning?

A. I didn't understand the "following." What is the word?

A. Did they take you out some place the next day?

A. They say they taken me to Mr. Ashcraft's home. They went out Chelsea and they said that was his home.

Q. How long did you stay there?

A. They drove down to the vacant lot and went right back on out.

Q. You never had been there before?

A. No, sir.

Q. Do you smoke cigarettes?

A. Yes, sir.

Q. Were you smoking cigarettes during the time of this murder?

A. I have been smoking ever since 1937.

Q. Now when the officers carried you over to Mr. Ashcraft's house and you left there, where did they carry you?

A. Carried me to a bridge.

Q. What happened at the bridge?

A. They made me pick up some rocks, them two rocks which you had in here the other day.

Q. They made you pick up the rocks?

A. Yes, sir, Mr. Becker put his pistol in my mouth.

Q. Mr. Becker put his pistol in your mouth and made you pick up some rocks?

A. Yes, sir.

Q. Did Mr. Becker have to stick a pistol in your mouth to make you pick up some rocks?

A. I didn't want to pick up those rocks and he made me [fol. 380] and I done so and he said "you son of a bitch you could have done that at first," and then they taken me to the automobile and brought me back to the county jail.

Q. You didn't say anything about that when Mr. McTighe was examining you?

A. He didn't ask me.

Q. They took you out there handcuffed and the officers had pistols?

A. I imagine they did. I know Mr. Becker had a pistol.

Q. You mean to tell this jury that Mr. Becker asked you to pick up some rocks and you refused and he had to put a pistol in your mouth to make you do it?

A. I don't know why he put the pistol in my mouth.

General Gerber: That's all.

Redirect examination.

By Mr. McTighe:

Q. John, what did Mr. Ezzell say?

A. He told Mr. Becker: "Let him alone. We have enough and lets get that \$200.00 reward."

General Gerber: When is the first time you have told us about that?

A. At the other trial.

General Gerber: He said "Lets get that \$200.00 reward?"

A. Yes, sir. I said that at the last trial, right here, before that other Judge.

Q. Did you make that same statement about Mr. Becker putting his pistol in your mouth at the last trial of this case?

A. Yes, sir.

Juror: John, when you were waiting for the street car that morning, how far is it from your house to the car line? [fol. 381] A. It is about a half a mile.

Juror: About what size was this piece of paper you got from the draft board?

A. If I had a piece of paper I would show you. (Witness folds piece of paper) It was a piece of white paper about that size.

Juror: Was that a notice to appear for an examination for military duty?

A. Yes, sir.

Q. Juror: Did you take the paper out of the envelope?

A. I didn't take it out until the next morning when I went in the doctor's office.

Juror: You stated I believe that when you first rode with Mr. Ashcraft it was because you didn't have any car fare?

A. Yes sir.

Juror: And you say nothing was said about any money on the way out in the car?

A. No, sir, boss, there wasn't anything said except I told him I would give him seven cents.

Juror: You didn't have car fare?

A. No, sir.

Juror: And you offered him seven cents.

A. Yes sir.

Juror: But you didn't have car fare. All right.

Mr. McTighe: John, with reference to your offering Mr. Ashcraft 7 cents, just explain that to the gentleman.

A. Yes, sir. About this seven cents proposition. It was [fol. 382] raining and it wasn't any place I could get this check cashed and I went to the foreman of the job—

Mr. McTighe:

Q. You have told us that, John. Tell about the seven cents?

The Court: How could you give him seven cents if you didn't have it?

A. I was going to get my check cashed. I would get off there where I was known. I could have got it cashed right there in the store. It was a store there where I was known and that's where I was going to get the 7 cents.

Re-recross-examination.

By General Gerber:

Q. John, who bought those pants at the Federal Clothing Co.?

A. My wife.

Q. Who got the shoes?

A. Shoes and pants.

Q. How could she buy shoes for you unless she got them fitted?

A. She knows my size. She has done that many times before.

Q. Do you remember Mr. Lokey, the man from Federal who testified here before that he sold you those pants and shoes?

A. No, sir.

Q. And the time those officers came out to your house and saw those pants hanging there, you say you told them you bought them at Federal Clothing Company?

A. No, sir, that was here—not at my house.

General Gerber: That's all.

(Witness excused.)

[fol. 383] CORA TAYLOR (Colored) called as a witness for the defendant Ware, being sworn, testified as follows:

Direct examination.

By Mr. McTighe:

Q. Your name is Cora Taylor?

A. That's right.

Q. You were the maid for Mrs. Ashcraft when this happened?

A. Yes sir.

Q. Did you have occasion to see a watch that was supposed to belong to Mrs. Ashcraft?

A. I did.

Q. Where did you find that watch?

A. On the vacuum cleaner box behind the bed.

Q. What did you do with it?

A. Put it in the chest of drawers.

Q. That's where it was later found?

A. Yes sir.

Mr. McTighe: That's all.

Cross-examination.

General Gerber:

Q. She kept that watch on that vacuum box all the time?

A. No, sir, not all the time. She never did have no special place to keep it.

Q. Did you tell us at the last trial that she kept it on the vacuum cleaner box all the time?

A. I say that's where I found it.

Q. You didn't say at the last trial that she kept it there all the time?

A. I don't remember that.

Q. You don't know how it got on that box?

[fol. 384] A. No, sir.

Q. You were brought to this jail that night and kept here 8 or 10 days?

A. Yes sir.

Q. Did anybody mistreat you down here?

A. No, sir.

Q. Did anybody strike you or try to make you tell that you had anything to do with killing Mrs. Ashcraft?

A. No, sir.

General Gerber: That's all.

Cross-examination.

By Mr. Bickers:

Q. How long did you work for Mr. and Mrs. Ashcraft?

A. Six months.

Q. How did they get along?

A. As far as I know he wasn't hardly ever at home.

Q. When they were together how did they get along?

A. All right.

Mr. Bickers: That's all.

(Witness excused.)

General Gerber: I want to recall Mr. Ashcraft for an omitted question.

E. E. ASHCRAFT recalled and testified as follows:

Recross-examination.

By General Gerber:

Q. Mr. Ashcraft, I want to ask you if, on the previous trial of this case, in answer to a question by your lawyer, Mr. Rhem, you didn't make this answer—it was about the [fol. 385] time that someone had died and you made this answer about what your wife said:

“She says ‘I don't know why the Lord didn't take me and let that good, able-bodied woman stay here,’ and I says ‘don't talk like that,’ and she says, ‘you know, sometime I think I will take the home and car and part of the money—she didn't say half the money—and just sit here and dry up.’”

A. Yes sir.

Q. Why did your wife make the statement about taking the home?

A. I don't remember her saying the home. I think “house.”

Q. Why did you- wife make that statement?

A. Because she felt bad. She was taking shots from Dr. McQuiston and she was feeling bad and somebody had passed away and she said she didn't know why the Good Lord didn't take her instead of that other able-bodied woman.

Q. Mr. Ashcraft don't you know that what prompted that statement about taking the home and the car and part of the money was the fact that you had offered to make a property settlement to get rid of her?

A. That was her statement and not mine.

General Gerber: That's all.

GEORGE A. BECKER recalled as a rebuttal witness for the State.

Redirect examination.

By General Gerber:

Q. Mr. Becker, I want to ask you if at the time you were out to the slough with the defendant Ware, you put a

pistol in his mouth and made him pick up the rocks introduced in evidence?

[fol. 386] A. No, sir.

Q. I want to ask you if at any time when you left Ware's house, or at any time he was in custody, you struck him with a pistol or hit him or slapped him?

A. I did not.

Q. I want to ask you if at the time you left Ware's house on the night you picked him up, you put the handcuffs on him?

A. At that time no handcuffs were put on him.

Q. I will ask you if at any time while you were talking to Mr. Ashcraft about this matter, he made any mention of a boy by the name of Tackett riding in his car with him?

A. He did not.

Q. I will ask you if, while you were at Ware's house that early morning, anything was said by Ware about any pants he bought at Federal Clothing store?

A. No, sir.

Q. Was there any occasion for that?

A. No, sir.

Q. I want to ask you if you ever saw this colored woman who testified, Henrietta Fredericks, before in your life?

A. Not until she testified yesterday.

Q. At the time you went out to get Ware did you go in her house?

A. No, sir.

Q. Did you try to wake her husband up?

A. No, sir.

Q. Did you hear the witness testify—the witness McKay [fol. 387] —about his so-called investigation?

A. I did.

Q. Tell the jury about that?

A. It was on Sunday afternoon after the body had been found on Thursday; we received word that someone in the Ashcraft home wanted to see us. I think Mr. Key drove out with me. We drove to the Ashcraft yard and into the driveway and Mr. McKay came out off the front porch and told us he wanted us to go down to the corner, that he had something he wanted to show us. We drove down to the corner of Chelsea and Stanton Road. Sometime previous to this occurrence someone had built a new fence around a lot on this corner and over west of the house Mr. McKay and I got out of the car. He carried me to this wire fence on this corner and showed me a spot that had

been trampled. The weeds had been cut from the ditch and the dirt had been packed down where somebody had stood. There were no cigarette butts there.

General Gerber: You may take the witness.

(Witness excused.)

BOB EZZELL recalled as a rebuttal witness for the State.

Direct examination.

General Gerber:

Q. You have previously testified?

A. Yes sir.

Q. I will ask you whether when you went out to get Ware on that early morning, you struck or anybody struck him?

A. No, sir.

Q. Did anybody put handcuffs on him?

A. No, sir.

[fol. 388] Q. I will ask you if he was brought down to the jail and put in a cell where you keep insane people?

A. No, sir.

Q. I will ask you if you, or any other officer in your present-, told Ware that if he didn't tell Mr. Becker that he killed this woman, he would be turned over to a mob?

A. No, sir.

Q. Did that happen?

A. No, sir.

Q. I will ask you if on the occasion when you took him, took Ware, to the slough, if Mr. Becker stuck a pistol in Ware's mouth and made him pick up the rocks which have been introduced in evidence?

A. No, sir.

Q. I will ask you if you made the statement to Mr. Ashcraft that if he didn't make a statement you were going to make up a statement and convict him on that?

A. No, sir.

Q. I will ask you if you asked Mr. Ashcraft to make a statement and said: "Come on and make a statement; it will help me with my job?"

A. That's the most ridiculous thing I ever heard.

Q. Did Mr. Ashcraft ever mention a boy named Tackett riding in his car with him?

A. No, sir.

General Gerber: That's all.

Cross-examination.

By Mr. Bickers:

Q. When did you go to work in the attorney general's office?

A. Around April 1, 1941.

Mr. Bickers: That's all.

[fol. 389] (Witness excused.)

W. H. KEY, called as a rebuttal witness for the State, being sworn, testified as follows:

Direct examination.

By General Gerber:

Q. State your name to the Court and Jury?

A. W. H. Key.

Q. You have been connected with the sheriff's office of Shelby County how long?

A. 17 years.

Q. Mr. Key I want to ask you if you were around this building during the time the investigation was in progress in connection with the Ashcraft murder case?

A. I was.

Q. I will ask you if, while Mr. Ashcraft was in this jail you cursed or abused or mistreated him?

A. I did not.

Q. How long would you say you talked to him the entire time he was up here?

A. 15 or 20 minutes.

Q. I will ask you if at any time while he was being talked to you took the photograph of his dead wife showing those wounds and rubbed it over his face and put it on his shoulder and said "how heavy is that on your shoulder" or anything like that?

A. No, sir.

Q. I will ask you if he was denied cigarettes or water?

A. Not in my presence.

Q. I will ask you if at any time you knocked a cigarette [fol. 390] out of his mouth and threw his package of cigarettes in the waste paper basket?

A. I did not.

Q. Did you tell him that you were going to do all the smoking and all the water drinking that was done around there?

A. No, sir.

Q. Did you threaten to knock him out of his chair?

A. No, sir.

Q. Did that happen?

A. No, sir.

General Gerber: Take the witness.

Cross-examination.

By Mr. Bickers:

Q. Did you ever strike a prisoner?

A. Yes, and I've been struck by prisoners.

General Gerber: Have you ever been shot at by a prisoner?

A. Yes sir.

Mr. McTighe: Nobody shot at you on the 5th floor?

A. No.

(Witness excused.)

BOB EZZELL (Recalled.)

General Gerber:

Q. Mr. Ezzell, did you ever see this colored woman, Henrietta Fredericks until she testified up here?

A. No, sir.

Q. Did you go in her house the night you arrested Ware?

A. No, sir.

Q. Did anybody try to wake up her husband?
[fol. 391] A. No, sir.

General Gerber: That's all.

(Witness excused.)

W. P. Battle, called as a rebuttal witness for the state, sworn and testified as follows:

Direct examination.

By General Gerber:

Q. State your name to the Court and Jury?

A. W. P. Battle.

Q. You are assistant attorney general of this county and have been how long?

A. Eight years.

Q. I will ask you if you had occasion to participate in the investigation in connection with the death of Mrs. Ashcraft?

A. I did.

Q. During that time did you have occasion to talk to the defendant Ashcraft?

A. I did.

Q. I will ask you if you had occasion to be here in this building between 7 o'clock, or about that time on Saturday night of the 15th of June—between 7 and 7:30, June 14, 1941, until the time that any statement was made by these two defendants?

A. I was here on Saturday, June 14, 1941, and I was here when the statements were made by the two defendants.

Q. I will ask you if at any time while you and Mr. Becker talked to the defendant Ashcraft or talked to the defendant Ware, whether anybody abused them or mistreated them in any way?

[fol. 392] A. They did not.

Q. I want to ask you if at any time while you were talking to Mr. Ashcraft, you threatened him by saying that you were going to hang a pail of water over his head and place him in a chair and let the water drip on his head and wear a hole in his hard head?

A. That's ridiculous and silly.

Mr. Bickers: Just a minute. I object to his answer: "That's ridiculous and silly." That's not responsive to anything.

The Court: Objection overruled.

Mr. Bickers: Note my exception.

Q. Answer it yes or no?

A. No.

Q. I will ask you if, while you were up there with Mr. Ashcraft you ever called him an "S. B."?

A. I did not.

Q. I will ask you if you ever offered Mr. Ashcraft a drink of whiskey?

A. I did not.

Q. I will ask you if you read the Bible to him?

A. I read the Bible in his presence for a minute or two.

Q. Will you tell us the circumstances under which you read the Bible?

A. I think it was 9 or 10 o'clock Sunday night. They had services upstairs on the 5th floor as usual and Mr. Becker and I had been talking to him and I believe Mr. Becker had left the room for a few minutes. I picked up the Bible and read a passage or two to him and made no comment on it at all.

Q. Did he show any objection to your reading the Bible [fol. 393] to him?

A. He made no objection and showed no reaction.

Q. Mr. Battle, I want to ask you if at any time in your presence Mr. Becker or anybody else struck either of these defendants?

A. No, sir.

Q. I will ask you if at any time in your presence either of the defendants were denied food or water?

A. No, sir.

Q. Did you hear this woman Henrietta Fredericks testify?

A. Yes, sir.

Q. Had you ever seen her before she came up here and testified?

A. No, sir.

Q. Did you all go in her house that night?

A. We did not.

Q. I will ask you whether this light over the desk on the fifth floor that has been mentioned was of such strength that a man sitting there in the chair couldn't look out of the windows and tell whether it was daylight or night?

A. No, it was just an ordinary light.

Q. I will ask you whether there were any shades on those windows?

A. None at all.

General Gerber: Take the witness.

Cross-examination.

By Mr. Bickers:

Q. You and I will agree that you are a very excellent lawyer?

A. That's a matter of opinion, I think, Mr. Bickers.

Q. Now, about this service that you had up there on this Sunday night; about what time did you read that passage [fol. 394] from the Bible?

A. Between 9 and 10 o'clock. There is a religious service held for prisoners on the 5th floor every Sunday as I understand it.

Q. Did you conduct the services that night?

A. Did I?

Q. You were with Mr. Ashcraft on that Sunday night?

A. Yes sir.

Q. Did somebody bring the Bible to you and hand it to you?

A. No, I picked it up.

Q. Did you read Mr. Ashcraft certain passages from the Scripture?

A. Several verses.

Q. Did you read him the story of the crucifixion?

A. I don't recall that I did.

Q. Did you read him that *passing* telling him to "do unto others as you would have them do unto you?"

A. Perhaps I did.

Q. Your testimony is that you did?

A. I might have.

Q. Just what passage did you read?

A. I read him the commandment "Thou shalt not kill."

A. Did you read him that more than once?

A. Only once.

Q. Did he say, when you read him that passage, that he hadn't killed anyone?

A. He didn't say anything at all.

Q. You don't know whether he heard it or not?

A. He could hear me if he could hear.

[fol. 395] Q. Was Mr. Ashcraft ever asleep in your presence up there?

A. No, sir.

Q. General Battle, was Mr. Ashcraft under arrest Saturday?

A. No, sir.

Q. He wasn't under arrest Sunday?

A. No, sir.

Q. Nor Sunday night?

A. That's correct.

Q. But he was in custody?

A. He was being talked to about the case.

(Witness excused.)

Adjournment.

Afternoon Session 1:45 P. M.

H. L. JAYROE called as rebuttal witness for the State being first duly sworn test-ed as follows:

Direct examination.

By General Gerber:

Q. Your name, please, sir?

A. H. L. Jayroe.

Q. You are connected with the Sheriff's office?

A. Yes, sir.

Q. What position do you hold at this time?

A. In charge of the homicide department.

Q. Are you ill at this time?

A. Yes sir.

Q. You came here out of a sick bed?

Q. Yes sir.

Q. Mr. Jayroe, in June of 1941, June 16, 1941, on the early [fol. 396] morning, Monday morning, you had occasion to go out to the home of John Ware when he was picked up?

A. Yes sir.

Q. I want to ask you if anybody struck him on that occasion?

A. No, sir.

Q. Did you on that night go in the home of a woman named Henrietta Fredericks?

A. We went into a negro's house; it was George Pryor's house.

Q. You didn't go in the Fredericks woman's house?

A. No, sir.

Q. State whether you accompanied the officers up to the 5th floor—whether, after the officers took John Ware to the

5th floor of this jail, he was taken by any officers, Becker or Ezzell or anybody else, off the 5th floor?

A. No, sir, not to my knowledge.

Q. Did Mr. Ezzell do that in your presence?

A. No, sir.

Q. Did any of the officers in your presence, take Ware and place him in a padded cell?

A. No, sir.

Q. State whether you, or any one else in your presence, ever told Ware that if he didn't tell Mr. Becker that he killed this woman, he would be turned over to a mob?

A. That's absolutely untrue.

(Witness excused.)

General Gerber: The state rests.

Mr. Bickers: I would like the record to reflect that Mrs. Smith, the wife of this man who testified that he was on his way to the garage that night—that his wife is out of the [fol. 397] jurisdiction of this Court and for that reason we could not get her here.

General Gerber: We are not going to agree to anything like that.

Mr. Bickers: I overlooked asking him the question.

General Gerber: I think the jury should retire.

The Court: You may take the Jury out.

(Jury out.)

Mr. Bickers: My purpose is simply to show that Mrs. Smith is out of the jurisdiction of this Court and is not available. That is one of the things I omitted asking Smith.

The Court: I understand the State will not agree to that.

General Gerber: No subpoena was issued—

Mr. Bickers: We couldn't; she was out of this jurisdiction.

The Court: Application denied. Bring in the jury.

Jury returns.

Mr. Bickers: We rest.

Mr. McTighe: The defendant Ware rests.

General Gerber: The State rests.

This was all the evidence in the case.

Jury out.

MOTIONS TO QUASH INDICTMENT, ETC.

Mr. McTighe: If the Court please, in behalf of the defendant Ware, at this time I move the Court that the indictment in this cause be quashed for the reason raised in the plea attacking the legality of the foreman of the Grand Jury, which plea has heretofore been filed and the ruling of the Court had on the same, and that the cause be dismissed.

That the jury be instructed that they can not return a [fol. 398] verdict of any higher degree or class of murder in the first degree higher than murder in the first degree with mitigating circumstances, and that the plea of autrefois acquit heretofore filed be sustained and the jury be so instructed.

That the court instruct the jury to disregard any oral statement made by the defendant Ware prior to his having been advised of his constitutional rights as to counsel and to the effect that it was necessary for him to make a statement, and further to the effect that the same might be used against him in Court, and that the same be stricken from the record and that the jury be instructed that they can not consider the same for any purpose.

That the court instruct the jury that they can not consider the alleged written statement or confession of the defendant Ware because the same is not free and voluntary, and was not signed by him, but was signed by a mark when the record clearly discloses that he can write, and that his refusal to sign his name is indicative of the fact that any attempted execution of said mark was not free and voluntary.

I further move the Court that this cause be dismissed and a verdict of not guilty entered because the proof does not show the guilt of the accused beyond a reasonable doubt even if accepted in its most favorable light.

Mr. Bickers: I join in that motion for the defendant, E. E. Ashcraft.

The Court: Both motions will be overruled on all grounds.

Mr. McTighe: I respectfully except for the defendant, Ware.

Mr. Bickers: I except for the defendant Ashcraft.

[fol. 399] (Thereupon, counsel for the parties argued their contentions to the jury, after which the Court charged

CHARGE TO JURY

"GENTLEMEN OF THE JURY:

"The indictment in this case contains two counts. The first count of the indictment charges both of the defendants with the offense of murder in the first degree. The second count of the indictment charges the defendant, Ashcraft, with being an accessory before the fact to murder in the first degree.

Insofar as the defendant, Ashcraft, is concerned, you will disregard the first count of the indictment, since if he is guilty at all, he is only guilty under the second count of the indictment.

While the first count of the indictment only charges murder in the first degree, it embraces four distinct felonious homicides, to-wit: murder in the first degree, murder in the second degree, voluntary manslaughter, and involuntary manslaughter.

The second count of the indictment charging the defendant, Ashcraft, with being an accessory before the fact to murder in the first degree also embraces the offense of accessory before the fact to murder in the second degree.

The law makes it the duty of the Court to give in charge to the jury the law relative to the case on trial, and of the jury to carefully consider all the evidence delivered to them on the trial, and, under the law given them by the Court, render their verdict with absolute impartiality.

The Jury, in no case, should have any sympathy or prejudice, or allow anything but the law and the evidence to have any influence upon them in determining their verdict.

Without reference at present to the facts of this case, I will now give you the law relative to the charge in this [fol. 400] indictment.

Murder is thus defined: "If any person, of sound memory and discretion, unlawfully kill any reasonable creature in being, and under the peace of the State, with malice aforethought, either express or implied, such person shall be guilty of murder."

From this definition, it is clear that malice is an essential ingredient of murder.

Malice is an intend to do an injury to another; a design formed in the mind of doing mischief to another.

A case of homicide cannot be murder unless at and before the killing the wicked intent, constituting malice aforethought, exists in the mind of the slayer.

Malice is either express or implied. In homicide, express malice is malice against the person killed.

Implied malice is malice not against the party slain, but malice in general, or that condition of the mind of the slayer which indicates a wicked, depraved and malignant spirit, and a heart regardless of social duty and fatally bent on mischief.

Murder in the First Degree

Murder in the first degree is thus defined:

"Every murder perpetrated by means of poison, lying in wait or by any other kind of wilful, deliberate, malicious and premeditated killing, or committed in the perpetration of, or attempt to perpetrate, any murder in first degree, arson, rape, robbery, burglary or larceny, is murder in the first degree."

When the act of killing is not done in the commission of, or attempt to commit, some of the felonies named in the definition of murder above, nor by poison, nor by lying in wait, in order to make it murder in the first degree, the [fol. 401] killing must be done WILFULLY, that is, of purpose, with the intent that the act by which the life of the party is taken should have that effect; DELIBERATELY, that is, with a cool purpose; MALICIOUSLY, that is, with malice aforethought; and with PREMEDITATION, that is, a design to kill must be formed coolly and deliberately and before the act is performed by which death is produced, and the killing must be the cool and deliberate act of the slayer.

This is the distinctive feature of murder in the first degree. It is not necessary that the cool and deliberate design to kill should have been conceived or preexisted for any definite period of time anterior to the killing. It is sufficient if it precede the killing, howsoever short the interval of time may be; for the length of time is not the essence of this element of this offense. The purpose to kill is no less premeditated, in the legal sense of the term, if it was deliberately formed but a moment before the killing, than if it had been formed an hour before. The mental state of the slayer at the time of the killing, rather than the length of time the act may have been premeditated, is the material

point to be considered. The question of importance is, "was the mind of the slayer, at the time of the killing, so far free from excitement or passion as to be capable of premeditation, as before explained, and was the death of the party slain the object sought to be accomplished by the slayer?"

An accessory Before the Fact to Murder in the First Degree is one who feloniously moves, incites, counsels, hires, commands or procures another to commit murder by means of poison or by lying in wait or by any other kind of wilful, deliberate, malicious or premeditated killing, or to commit it in the perpetration of, or attempt to perpetrate, any murder in the first degree, arson, rape, robbery, burglarly or larceny.

[fol. 402] An accessory before the fact to murder in the second degree, is one who feloniously moves, incites, counsels, hires, commands and procures, another to unlawfully, feloniously, wilfully and maliciously, kill any person upon a sudden impulse of passion and without adequate provocation.

Murder in the Second Degree

Malice is an essential-ingredient of murder in the second degree, and may be either express or implied. A man may intentionally kill another under such circumstances that will make the killing murder in the second degree. If one person, upon a sudden impulse of passion, without adequate provocation, and disconnected with any previously formed design to kill, kills another wilfully and maliciously, such killing will be unlawful, and will be murder in the second degree, although the slayer is actuated by express malice against the party killed.

As before stated, implied malice may be an essential element of murder in the second degree. This is where the slayer does not intend to slay the person killed. This occurs where a party does an unlawful act, which may probably result in depriving some person of life, or performs an act lawful in itself, in such a reckless and careless manner that it may probably result in depriving some person of life, and if, in such case, some person is killed, the person thus causing the death will be guilty of murder in the second degree.

In such case, the law regards the conduct of the party causing the death, of such a character as to indicate a de-

praved and wicked mind and heart, regardless of social duty, and fatally bent on mischief, and hence says that when death is thus caused the party thus causing it is guilty of murder in the second degree; that is, murder in which implied malice is the essential element.

[fol. 403] If the slayer, with premeditated intent to slay a certain person, by misadventure and undesign, slay another person, such slaying will be murder in the first degree.

Malice aforethought, as applied to the crime of murder in the second degree, covers all cases where the act is done under such cruel circumstances as are the ordinary indications of a wicked, depraved and malignant spirit, as when the punishment inflicted by a party, even upon provocation, is outrageous in its nature and continuance, and beyond all proportion to the offense, so that it is to be attributed to malignity and brutality, rather than human infirmity.

Where the use of a deadly weapon by the party killing, is shown, and the death is clearly shown in the proof to have resulted from its use by the slayer, the use of such weapon may be considered by the jury to establish that the killing was done maliciously; that is, with malice required to support murder in the second degree. But where the death and its manner and all the surrounding and accompanying circumstances, are shown in the proof, then malice is not presumed, but the jury are to determine from them whether or not it was present as an ingredient of the offense.

Malice cannot be inferred from the deadly intent merely, because the deadly intent may be justifiable under the law; as when one wilfully kills another to save his own life, or to save himself from great bodily harm and the danger is imminent and immediate; or when the intent to kill is produced by anger; for if it were sudden and upon reasonable provocation, the killing would not be murder, but manslaughter.

Voluntary Manslaughter

If one man kills another upon a sudden heat, produced by adequate provocation, as if upon a sudden quarrel two persons fight and one kills the other, this is voluntary manslaughter [fol. 404] and in general, if a person that is struck strikes again, and death ensues from the blow, it is voluntary manslaughter, the law regarding the blow sufficient provocation to excite the passion, and the act of

killing will be imputed to the heat of blood and passion, rather than malice, if no undue advantage be taken by the party doing the killing. The sudden heat, which is the distinguishing characteristic of this offense, must be produced by adequate provocation, the true general rule being that reason must, at the time of the act, be disturbed by passion to an extent which might render ordinary men, of fair average discretion, liable to act rashly, or without due deliberation or reflection, and from passion rather than judgment. If the act of the defendant charged in this case was the result of impulse of passion, excited upon sudden heat and adequate provocation, the idea of malice is repelled, and the killing is voluntary manslaughter.

Involuntary Manslaughter

Involuntary manslaughter is where it plainly appears that neither death nor bodily harm was intended by the party killing, and that death was accidentally caused by some unlawful act or by some act not strictly unlawful in itself, but done in a reckless and unlawful manner and without due caution, and that death was the natural or probable result of such act.

Accessory Before the Fact

Any person, who shall feloniously, move, incite, counsel, hire, command or procure any other person to commit a felony is an accessory before the fact.

An accessory before the fact to murder, tried with the principal, shall be punished, as the principal is punished, but his punishment shall not exceed the maximum punishment given the principal.

The punishment for murder in the first degree, or for an accessory before the fact to murder in the first degree is [fol. 405] death by electrocution, unless the jury are of the opinion there were mitigating circumstances in which event the jury may commute the punishment to imprisonment for life, or to not more than a definite period of time between twenty years and life.

The punishment for murder in the second degree, or for an accessory before the fact to murder in the second degree, is imprisonment in the penitentiary for not more than a definite period of time between ten and twenty years.

The punishment for involuntary manslaughter is confinement in the State Penitentiary for not more than some definite period of time between one and five years, unless the jury thinks it should be less, in which event they may commute the punishment to any period of time in the Work-house, less than one year.

To render one guilty as an accessory before the fact, he must have had the requisite criminal intent. He need not, however, necessarily have intended the particular crime committed by the principal; an accessory is liable for any criminal act which in the ordinary course of things was the natural or probably consequence of the crime which he counseled or commanded, although such consequence may not have been intended by him.

Alibi

The defendant, John Ware, has interposed for your consideration, the defense of an alibi. In other words, he says that at the time of the alleged crime he was at another place than the place where the alleged crime was committed and that he did not commit the alleged crime.

The word "alibi" means, elsewhere, and if the proof in this case fairly raises the defense of an alibi, or if there [fol. 406] is a reasonable doubt from the whole body of the proof as to the presence of the defendant, John Ware, near the place where the crime was committed at the time it was committed, then the defendant, John Ware, would be entitled to a verdict of not guilty at your hands.

Also, if the proof of an alibi in this case, taken in connection with all of the other proof in the case raises a reasonable doubt in your own minds as to whether or not the defendant, John Ware, was present and committed the crime charged in the first count of the indictment against him, then you should acquit the defendant, John Ware,

The law says, Gentlemen of the Jury, that the defense of an alibi should be received by the jury discreetly and cautiously because it is a defense that is easily manufactured or fabricated. But it is for the jury to determine whether the defendant was or was not present when the alleged offense was committed and whether he did or did not commit the same, and this, you must fairly and impartially determine from the whole body of the proof.

I further charge you that if verbal or written statement made by the defendants freely and voluntarily and without

fear of punishment or hope of reward, have been proven to you in this case, you may take them into consideration with all of the other facts and circumstances in the case.

What the proof may show you, if anything, that the defendants have said against themselves, the law presumes to be true, but anything the defendants have said in their own behalf, you are not obliged to believe, but you may treat the same as true or false when considered with a view to all the other facts and circumstances in the case. In statements made at the time of the arrest, you may take into consideration the condition of the minds of the prisoners owing to their arrest and whether they were influenced by motives of hope or fear, to make the state- [fol. 407] ments. Such a statement is competent evidence against the defendant who makes it and is not competent evidence against the other defendant, and you can only consider it as to the defendant making it. You cannot consider it for any purpose against the other defendant.

Evidence of the good character of the defendant, Ashcraft, has been offered on his behalf. You will consider the evidence of good character offered on his behalf along with all of the other facts and circumstances in the case. While a man of good character may, of course, violate the law, all other things being equal, a man of good character is not so likely to violate the law as one of bad character.

You are the sole judges of the facts. Expert witnesses have been allowed to testify as to the presence of certain foreign substances in the body of the deceased, and other matters, and to state their opinions. With reference to this testimony, which you should consider and judge along with all the other proof, I charge you that it should be received with caution. While this kind of testimony is sometimes the only means, or the best way to reach the truth, yet it is largely a field of speculation, beset with pitfalls and uncertainties, and requires patient and intelligent consideration to reach the truth. You should give it the same consideration as all the other proof, governed by the same rules to arrive at the truth, giving fair consideration as to all the proof.

If you find from all of the evidence in the case that the defendant Ware, has on some previous occasion been convicted of some minor offense, you may only consider it as affecting his credit-ibility as a witness and you cannot con-

sider it or allow it to weaken the presumption of innocence in the cause on trial.

It is the theory of the State that on the early morning of June 5, 1941, the defendant, E. E. Ashcraft, feloniously [fol. 408] hired, counseled, incited, commanded and procured the defendant, John Ware, alias Tom Ware, to take the deceased, Zelma Ida Ashcraft, from her home at 3520 Stanton Road, in Shelby County, Tennessee, to a place some distance away, immediately off of Raleigh Road, in Shelby County, Tennessee, and there unlawfully, feloniously and maliciously, wilfully, deliberately, premeditatedly and of his malice aforethought to kill and murder her and that in pursuance of that agreement, the defendant Ware did on the early morning of June 5, 1941, take the deceased Zelma Ida Ashcraft from her home to a body of water near Raleigh, Tennessee and there unlawfully, wilfully, feloniously, maliciously, deliberately and premeditatedly kill her by striking her on the head with some jagged, blunt instrument.

If you find from the evidence, beyond a reasonable doubt, that the defendant Ware unlawfully, wilfully, maliciously, deliberately, and premeditatedly killed Zelma Ida Ashcraft as charged in the indictment, your verdict should be, "We, the jury, find the defendant Ware guilty of murder in the first degree, as charged in the indictment and fix his punishment at death by electrocution," unless you are of the opinion that there were mitigating circumstances, in which event you may commute the punishment to life in the penitentiary or for not more than a definite period of time, over twenty years.

If you find from the evidence, beyond a reasonable doubt, that the defendant Ware upon a sudden impulse of passion, without adequate provocation, unlawfully, wilfully and maliciously killed Zelma Ida Ashcraft, as charged in the indictment, your verdict should be: "We, the jury find the defendant Ware guilty of murder in the second degree, as charged in the indictment and fix his punishment at imprisonment in the penitentiary for not more than (a definite period of time)" designating the maximum term [fol. 409] which the defendant may be required to serve at a definite period of time between ten and twenty years.

If you find from the evidence beyond a reasonable doubt that the defendant, Ware, upon a sudden impulse of pas-

sion, excited by sudden heat and adequate provocation unlawfully and wilfully killed Zelma Ida Ashcraft, as charged in the indictment, your verdict should be, "We the jury, find the defendant, Ware, guilty of voluntary manslaughter; as charged in the indictment, and fix his punishment at imprisonment in the penitentiary for not more than (a definite period of time), designating the maximum term which the defendant may be required to serve at a definite period of time between two and ten years.

If you find from the evidence beyond a reasonable doubt, that the defendant, Ware, unlawfully killed Zelma Ida Ashcraft as charged in the indictment; and it plainly appears that neither death nor bodily harm was intended, and that death was accidentally caused by some unlawful act on the part of the defendant, Ware, or by some act not strictly unlawful in itself, but done in a reckless and unlawful manner, and without due caution, and that death was the natural or probable result of such act, your verdict should be: "We, the jury find the defendant, Ware, guilty of involuntary manslaughter, as charged in the indictment, and fix his punishment in the penitentiary for not more than a (definite period of time)", designating the maximum term which the defendant may be required to serve at a definite period of time between one and five years unless you think it should be less, in which event you can fix it at any time in the county workhouse, under 12 months.

If you find from the evidence beyond a reasonable doubt that the defendant, E. E. Ashcraft, feloniously moved, incited, counseled, hired, commanded or procured the defendant [fol. 410] ant Ware to unlawfully, wilfully, maliciously, deliberately and premeditatedly kill and murder the deceased, Zelma Ida Ashcraft, your verdict should be, "We, the jury, find the defendant, E. E. Ashcraft, guilty of an accessory before the fact to murder in the first degree as charged in the indictment, and fix his punishment at death by electrocution," unless you are of the opinion there were mitigating circumstances, in such event you may commute the punishment to life in the penitentiary of the State or for not more than a definite period of time over twenty years and life.

If you find from the evidence beyond a reasonable doubt, that the defendant E. E. Ashcraft, feloniously moved, incited, counseled, hired, procured or commanded the defendant Ware to unlawfully, wilfully and maliciously kill Zelma

Ida Ashcraft upon a sudden impulse of passion and without adequate provocation, as charged in the indictment, your verdict should be, "We, the jury, find the defendant, E. E. Ashcraft, guilty of an accessory before the fact to murder in the second degree as charged in the indictment, and fix his punishment at imprisonment in the penitentiary of the State for not more than (a definite period of time)," designating the maximum term which he may be required to serve at a definite period of time between ten and twenty years.

The Theory of the Defendant Ware

It is the theory of the defendant, Ware, that he is not guilty of any offense and that the State of Tennessee has failed to prove his guilt beyond a reasonable doubt. It is his further theory that at the time of the alleged offense charged against him was committed, he was not present at the place where the alleged offense was committed, but was at the home of his mother and father, ill, which was a considerable distance from the place where the crime is alleged to have been committed.

It is his further theory that he was induced by the fear [fol. 411] of violence at the hands of a mob and by fear of the officers of the law to confess his guilt of the crime charged against him, but that such confession was false and that he had nothing whatsoever to do with, and no knowledge of the alleged crime. If you believe the theory of the defendant, Ware, or if upon all the proof you have a reasonable doubt of his guilt, it is your duty to acquit him.

The Theory of the Defendant, Ashcraft

It is the theory of the defendant, Ashcraft, that he did not counsel, hire, incite, command or procure the defendant Ware to kill the deceased Zehna Ida Ashcraft and that he had nothing whatsoever to do with her death, and that he is not guilty of the offense charged against him in the indictment and that the State of Tennessee has failed to prove his guilt beyond a reasonable doubt. If you believe the theory of the defendant, Ashcraft, or if you believe the theory of the defendant, Ware, or if upon all the proof, you have a reasonable doubt of the guilt of either of the defendants, it is your duty to acquit the defendant, Ashcraft.

You may convict both defendants if you are satisfied beyond a reasonable doubt that they are both guilty. If you have a reasonable doubt as to the guilt of the defendant, Ware, you should acquit both defendants. If you are satisfied beyond a reasonable doubt that the defendant Ware is guilty and you have a reasonable doubt as to the guilt of the defendant Ashcraft, you should convict the defendant Ware and acquit the defendant Ashcraft.

You enter upon this investigation with the presumption that neither of the defendants are guilty of any crime, and this presumption stands as a witness for each of them until it is repudiated and over turned as to the particular [fol. 412] defendant by competent and credible proof. It is therefore incumbent upon — State of Tennessee, before you can convict either of the defendants, to establish to your satisfaction beyond a reasonable doubt:

First: What the law calls the corpus delecti, the body of the crime, that is, that Zelma Ida Ashcraft has been killed;

Second: The venue, that is that she was killed in the County of Shelby and the State of Tennessee, and before the filing of this indictment;

Third: As to the defendant Ware, that the defendant Ware killed her and that the killing was done in such a manner and by such means and under such circumstances as would make him guilty under the law of some one of the grades of felonious homicide heretofore defined and explained to you.

As to the defendant, Ashcraft, that the defendant Ware killed Zelma Ida Ashcraft and that the killing was done in such a manner and by such means as to make the defendant Ware guilty under the law, of either murder in the first degree or murder in the second degree as heretofore defined and explained to you, and that the defendant Ashcraft feloniously moved, incited, counseled, hired, commanded and procured the defendant Ware to kill her under such circumstances.

Reasonable Doubt

By reasonable doubt is meant, not that which, of possibility, may arise, but it is that doubt engendered by an investigation of the whole proof, and an inability after such investigation to let the mind rest easily upon the certainty

the law to convict of any criminal charge, but moral certainty is required. And this certainty is required as to every proposition of proof requisite to constitute the offense, and as to every grade of crime charged or included in the indictment.

Impeaching a Witness

[fol. 413] There are several modes of impeaching a witness. One mode is to prove by credible witnesses that they know the general character of the assailed witness, and from that general character they would not believe him or her on oath in a court of justice. The fact that the character of the witness is assailed by a single witness casts a reproach upon him, and when the general character of the witness is assailed upon the one hand and sustained upon the other by witnesses, it then becomes a question to be decided upon by the jury, like all other questions of fact, and it is not to be judged by the number of witnesses for or against, but by their respectability, intelligence, consistency and means of information.

Another mode is to prove that a witness has, at different times, made conflicting statements as to the material facts of the case as to which he testifies.

Still another mode is by a rigid, and close cross-examination to involve the witness in contradictions and discrepancies as to the material facts stated by him. Immaterial discrepancies or differences in the statements of witnesses do not affect their credibility, unless there is something to show that they originated in wilful falsehood, and you, Gentlemen of the Jury, are to determine how far the testimony of any impeached witness has been impaired by any invalidating process.

Credibility of Witnesses

You will take all the evidence adduced in this case by the State and by the defendants, and give it a full, fair and impartial consideration. If there are conflicts in the statements of different witnesses, it is your duty to reconcile them, if you can, for the law presumes that every witness has sworn to the truth; but if you cannot, the law makes you the sole and exclusive judges of the credibility of the witnesses, and the weight to be given their testimony. In [fol. 414] forming your opinion as to the credibility of the witness, you may look to the proof, if any, of his general

character, the manner and demeanor or the witness, the consistency or inconsistency of the statements, their probability, or improbability, his ability and willingness to speak the truth, his intelligence and means of knowledge, his motive to speak the truth or swear a falsehood, and his interest or lack of interest in the outcome of the lawsuit.

When a defendant makes himself a witness in his own behalf, his credibility is to be determined by the same rules that the credibility of other witnesses is determined, and you will give to the defendant's testimony in this case such weight as you may think it entitled to.

When you retire to consider of your verdict, you will first inquire: Is the defendant Ware guilty of murder in the first degree?

If you find from the evidence beyond a reasonable doubt, the defendant Ware guilty of murder in the first degree, as charged in the indictment, you will fix the penalty at death by electrocution, unless you are of the opinion there are mitigating circumstances, in which event you may commute the punishment to imprisonment for life in the Penitentiary of the State, or for not more than a definite period of time between twenty years and a day and life.

If you find the defendant Ware not guilty of murder in the first degree, or if you have a reasonable doubt as to his guilt of that crime, you will acquit him of that offense, and proceed to inquire whether or not he is guilty of murder in the second degree.

If you find from all the proof, beyond a reasonable doubt, that the defendant Ware is guilty of murder in the second degree, you will assess the maximum term of his confinement in the Penitentiary of the State at not more than a [fol. 415] definite period of time, between ten and twenty years.

But if you should find the defendant Ware not guilty of murder in the second degree or if you have a reasonable doubt of his guilt thereof, you will acquit him of that offense and proceed to inquire whether or not he is guilty of voluntary manslaughter.

If you find him guilty of that offense, beyond a reasonable doubt, you will assess the maximum term of his confinement in the penitentiary at not more than a definite period of time, between two and ten years.

If you should find him not guilty of voluntary manslaughter, or you have a reasonable doubt of his guilt

thereof, you will acquit him of that offense, and proceed to consider whether he is guilty of involuntary manslaughter, and if you should find from the proof, beyond a reasonable doubt, that he is guilty of involuntary manslaughter, it will be your duty to convict him of that offense, and you will assess the maximum term of his confinement in the Penitentiary of the State at not more than a definite period of time, between one and five years, or it is within your power to commute his punishment from confinement in the penitentiary to imprisonment in the County Work House for any period, less than one year.

If you find the defendant Ware guilty at all, you must say in your verdict of what degree of felonious homicide he is guilty.

If upon all the proof in the case, you have a reasonable doubt of the prisoner's Ware's guilt, of any of the offenses defined and explained to you, it is your duty to acquit the defendant, and your verdict will be "not guilty".

In the event that you find the defendant Ware guilty of [fol. 416] murder in the first or second degree, you will then proceed to inquire whether or not the defendant, E. E. Ashcraft, is guilty of accessory before the fact to murder in the first degree. If you find him guilty of this offense beyond a reasonable doubt and if you have found the defendant Ware guilty of murder in the first degree, your verdict should be, "We the jury, find the defendant, E. E. Ashcraft, guilty of accessory before the fact to murder in the first degree, as charged in the indictment, and fix his punishment at death by electrocution, unless you are of the opinion there were mitigating circumstances, in which event you may commute the punishment to imprisonment for life in the Penitentiary of the State or for not more than a definite period of time between twenty years and a day and life. If you find the defendant, E. E. Ashcraft, not guilty of accessory before the fact to murder in the first degree, or if you have a reasonable doubt of his guilt of that crime, you will acquit him of that offense and proceed to inquire whether or not he is guilty of accessory before the fact to murder in the second degree. If you find him guilty of that offense, beyond a reasonable doubt and if you have found the defendant Ware guilty of murder in the second degree, your verdict should be, "We, the jury, find the defendant, E. E. Ashcraft, guilty of accessory before the

fact to murder in the second degree as charged in the indictment and assess the maximum period of his confinement in the Penitentiary at not more than a definite period of time between ten and twenty years. If from all the proof in the case you have a reasonable doubt as to his guilt, your verdict as to him will be, "We, the jury find the defendant, E. E. Ashcraft, not guilty."

You will write the names of the defendants in your verdict and sign one of your names to your verdict as foreman. Take the case, consider all the facts and circumstances fairly and impartially and return to the Court such verdict as truth dictates and justice demands.

James J. Pleasants, Jr., Judge.

(The Jury, after deliberating, returned the following verdict.)

VERDICT

"We, the jury, find the defendant Ware guilty of murder in the first degree with mitigating circumstances as charged in the indictment and fix his punishment at not more than ninety-nine years in the penitentiary."

R. T. Baker, Foreman.

VERDICT

"We, the jury, find the defendant E. E. Ashcraft, guilty of an accessory before the fact to murder in the first degree as charged in the indictment and fix his punishment at not more than ninety-nine years in the penitentiary."

R. T. Baker, Foreman.

[fol. 418] IN CRIMINAL COURT OF SHELBY COUNTY, TENN.

[Title omitted]

MOTION FOR NEW TRIAL

Comes the defendant, John Ware and moves the court to grant him a new trial and to set aside the verdict of the jury and to grant him a directed verdict of not guilty in accordance with his motions made at the conclusion of the

state's proof and at the conclusion of all the proof and in support of said motion says:

1

There is no evidence to support the verdict.

2

That there is no evidence from which the jury could find the defendant guilty beyond a reasonable doubt and to a moral certainty.

3

That the verdict is against the greater weight and preponderance of the evidence.

4

That the verdict is contrary to the law and the evidence in the cause.

5

That the Court erred in overruling defendant's plea of autrefois acquit filed previously to the trial.

6

That the Court erred in not granting defendant's motion to quash the indictment in this cause because of the illegality of the service of the foreman of the Grand Jury, the Honorable Thomas J. Wellford.

7

[fol. 419] The Court erred in not quashing the indictment after the legality of the foreman thereof had been properly challenged by defendant.

8

The Court erred in admitting any oral statements made by the defendant, Ware to any of the officers against his interest before he was advised of his constitutional rights and that the same might and would be used against him in a court of justice.

9

The Court erred in admitting any statements against

constitutional rights said statements being either oral or written.

10

The Court erred in admitting the alleged statement of defendant, Ware written by witness Waldauer and signed by "X" mark when the proof showed defendant not only could write but wrote his name in all business transactions as exemplified by the introduction of the various payroll checks indorsed by defendant in his own name and in his own handwriting.

11

The Court erred in admitting in evidence the alleged confession of defendant Ware because the same was not freely and voluntarily made.

12

The Court erred in admitting the testimony of the witness Becker for the state to testify that in his opinion the footprints on the Ashcraft car seat was made by defendant, Ware's shoes taken from him after his arrest and while he was a prisoner in the county jail because said witness never qualified as an expert witness as to footprints and the question which he attempts to decide for the jury was their exclusive province and could not be invaded by such improperly predicated opinion evidence.

13

The Court erred in admitting over objection of defendant any and all testimony relating to any previous marriage or marriages of co-defendant, Ashcraft, as the State was bound by the answer of defendant on collateral matters and such evidence tended to seriously injure this defendant because it was intended to create a false or untrue condition from which the jury might become prejudiced against the defendant, Ashcraft and thereby seriously injure this defendant.

14

The Court erred in not granting the motion of defendant Ware at the conclusion of all the proof to dismiss this cause and have the jury by instructions return a verdict of not guilty.

15

Wherefore the defendant, Ware prays the Court to grant him a new trial in the instant cause.

Respectfully submitted, W. A. McTighe, Attorney
for Ware.

[fol. 421] IN THE CRIMINAL COURT OF SHELBY COUNTY,
TENNESSEE

[Title omitted]

SUPPLEMENTAL MOTION FOR NEW TRIAL

Comes the defendant, John Ware, and for supplemental motion for new trial avers;

16

That the Court erred in refusing to allow counsel to argue to the jury facts with reference to inferences to be drawn from the facts in said cases are parallel to the case at bar.

17

That the Court erred in not striking out said alleged confession and that the admission of the same violated his rights under the U. S. and Tennessee State constitutions.

Respectfully submitted,
William A. McTighe, Attorney for Ware.

[fol. 422] IN CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

No. 49904

STATE OF TENNESSEE

VS.

E. E. ASHCRAFT

ORDER OVERRULING MOTION FOR NEW TRIAL, ETC.—Filed
January 7, 1943

Said motion for new trial came on for hearing before the Court, and after argument of counsel and due considera-

tion by the court, it was the opinion of the court that said motion should be overruled, and it is so ordered and said motion for new trial is overruled, to which action of the court in overruling said motion for new trial, the defendant then and there excepted and prayed for an appeal to the Supreme Court of Tennessee which was granted.

Pleasants, Judge.

[File endorsement omitted.]

[fol. 423] IN THE CRIMINAL COURT OF SHELBY COUNTY,
TENNESSEE

No. 49904

STATE OF TENNESSEE

VS..

E. E. ASHCRAFT

ORDER OVERRULING MOTION IN ARREST OF JUDGMENT, ETC.—
Filed January 7, 1943

Thereupon counsel made motion in arrest of judgment upon the same grounds set forth in the motion for new trial herein, and after due consideration by the court and argument of counsel, it was the opinion and judgment of the court that said motion in arrest of judgment should be overruled, to all of which action of the court in overruling said motion, the defendant then and there excepted and prayed an appeal which was granted.

Pleasants, Judge.

[File endorsement omitted.]

[fol. 424] IN CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

[Title omitted]

ORDER OVERRULING MOTIONS OF DEFENDANT JOHN WARE FOR
NEW TRIAL.

This cause having come on to be heard upon the written motion of defendant, John Ware, filed heretofore and upon

argument of counsel and after due consideration by the Court, the Court being of the opinion that the same should be overruled, it is;

Therefore ordered, adjudged and decreed that the motion and supplemental motion for new trial in behalf of defendant, John Ware, be and the same are hereby overruled to which action of the Court the defendant respectfully excepts and prays an appeal to the Supreme Court of Tennessee.

It is further ordered that the defendant have and be allowed 7 days to file his bill of exceptions in this cause.

James J. Pleasants, Jr., Judge.

[fol. 425] IN CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

[Title omitted]

MOTION FOR NEW TRIAL

Comes now the defendant, E. E. Ashcraft, and moves the court to set aside the verdict of the jury herein made and entered and grant a new trial, and sets forth in support of his motion the following grounds:

I

There is no evidence to support the verdict of the jury.

II

There is no evidence from which the jury could find the defendant guilty to moral certainty and beyond reasonable doubt.

III

The verdict of the jury is against the greater weight and preponderance of the evidence.

IV

The verdict of the jury is contrary to the law and evidence in the case.

V

The evidence in the case preponderates in favor of the innocence of the defendant rather than guilt.

VI

The court erred in refusing to grant a motion made for and in behalf of the defendant for directed verdict of not guilty, both at the conclusion of the State's proof and at the conclusion of all the proof introduced in the case.

VII

The court erred in allowing an unsigned typewritten statement [fol. 426] to be introduced in evidence purporting to be a confession on the part of the defendant of his guilt in this case. The said statement which is claimed by the State to be a confession was unsigned and was in no sense the act or admission of the defendant and was incompetent to be introduced in evidence on any theory known to the law of the evidence. Said paper writing was incompetent and irrelevant for any purpose.

VIII

The court erred in allowing not only the paper writing above referred to to be introduced in evidence against the defendant, but also erred in allowing witness Becker or any other witnesses to testify as to admission, conversation or purported confession alleged to have been made by the defendant Ashcraft in this case. This was an error because on the face of the record and all of the evidence introduced, it is clearly shown that any alleged admission, conversation or alleged confession were not made by the defendant freely and voluntarily, but, if made at all, were made under duress and after force had been applied and after the defendant admittedly had been under the custody, control, exclusively of officers Becker and other officers of the Sheriff's force, and kept in one room for a period of more than thirty-six hours. He says that he was not only constantly quizzed and interrogated during this whole period of time by the officers in relays, but was quizzed, interrogated and harrassed by the prosecuting attorney or members of his staff during this period of time. He avers in support of said ground for motion for new trial that his constitutional rights were violated; that is to say, not only his rights under the Constitution of the State of Tennessee, but also his rights under the Constitution of the United States.

The court erred in not granting the motion made by counsel for the defendant Ashcraft with reference to the introduction of evidence with reference to his alleged confession [fol. 427] couched in the following language to-wit:

"Now comes the defendant, E. E. Ashcraft, through his counsel of record, and moves the court to strike from the record, and instruct the jury to disregard, any conversations testified to by the witnesses Becker, Ezell, Waldauer, and Battle. I believe that's all the witnesses. And any other witness' statements, as to statements made by the defendant Ashcraft after the 6th day of June, 1941.

Secondly, I move the court to strike from the record, and instruct the jury to disregard, the testimony of the above witnesses as to any statements made by the defendant Ashcraft after he was brought to this jail on the 14th day of June, 1941; and instruct the jury that they can not be considered for any purpose.

The defendant Ashcraft further moves the court, on behalf of both defendants, that the alleged confession of Ashcraft and the alleged confession of Ware not be allowed to be read to the jury;

The defendant Ashcraft further moves the court to exclude the alleged confession of Ashcraft for the reason that the statements contained therein were not freely and voluntarily made, nor were they free from duress and restraint, but were secured by compulsion and in violation of his constitutional rights given him under the constitution of the United States and the State of Tennessee."

This was error for the reason that this record plainly and obviously shows that any statements testified to by the witnesses were made under duress and under circumstances that clearly show they were not freely and voluntarily made, and that the action of said witness Becker and others and the attorney general or his representatives in their treatment of him (the defendant) was in violation of his rights under the Constitution of the State of Tennessee and also the constitution of the United States.

X

The court erred in this case in delivering his charge to the jury in that he in no place or at any time in his charge to the jury presented the theory of the defendant Ashcraft to the jury. He wholly and completely in his charge ignored the contention and theory of the defendant Ashcraft that the alleged confession or admissions made by him either in writing or orally made were made by him through duress, force and threatened violence, and were not freely and voluntarily made and wholly incompetent as evidence against him in the case, or that if the jury found that said statements were not freely and voluntarily made the jury could not consider them for any purpose against him. He [fol. 428] submits that the court therefore wholly failed to submit the theory of this defendant to the jury at all and that this was an error.

XI

The court erred in not protecting both in his charge and his rulings with respect to the alleged confession made by the defendant Ashcraft, his constitutional rights under the constitution of the United States as follows:

I

Amendment V. U. S. No person shall be deprived of life, liberty or property without due process of law.

II

Amendment VI. U. S. Constitution. In all criminal prosecutions the accused shall enjoy the right to speedy and public trial by impartial jury of the State and District wherein the crime shall have been committed.

III

Section IX Constitution State of Tennessee: That all criminal prosecutions or accused have the right to be heard by himself and counsel and shall not be compelled to any evidence against himself.

The defendant in this case charges that his constitutional rights were violated and the court in this case failed to either charge the jury that if they believed the alleged admissions and confession testified to by officer Becker and

others were not freely and voluntarily — they could not be considered against him by the jury, and that if force or duress were administered to him, the defendant, in securing said alleged confession or admission it was in violation of his constitutional rights under both the Constitution of the State of Tennessee and the constitution of the United States.

XII

The court erred in refusing counsel for defendant in this case the right to argue both the facts and the law of reported cases found in the decisions of the State; of the United States and the Federal Courts of a similar character. It is asserted that the court erred in so limiting counsel for the defendant in this case, in his argument; that he had a right to discuss the decisions of any and all courts [fol. 429] of the United States both the facts and the law set forth in said opinions as it might apply to the facts of the case of this defendant.

Wherefore defendant moves the court to set aside the verdict of the jury in this case and grant him a new trial.

Jas. L. Bickers, Attorney for Defendant Ashcraft.

[fol. 430] IN CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

[Title omitted]

AMENDED AND SUPPLEMENTAL MOTION FOR NEW TRIAL FILED
BY AND IN BEHALF OF THE DEFENDANT, E. E. ASHCRAFT—
Filed January 7, 1943

Comes now the defendant in this case and files this his amended and supplemental motion for new trial herein, and sets forth the following grounds, to-wit:

I

The trial court in this case erred in allowing the State, over the objection and exception of the defendant, to introduce testimony through witnesses Becker, Battle and others to certain alleged admissions and confession of said defendant Ashcraft made by him after approximately eleven o'clock Saturday night, the night on which he was taken to

the Shelby County jail, and placed in a room on the fifth floor of said jail, for the reason that at that time or about that hour, eleven o'clock Saturday night, he was definitely charged by the witness Becker of the Sheriff's staff of deputies and by assistant Attorney General Battle, who was aiding, advising and collaborating with said Becker, and other members of the Sheriff's staff of deputies, with having murdered his wife. The said Becker testified as follows, found on page 289 of the record of bill of exceptions of this case:

Q. Did you tell him at that time that you believed he had killed her?

A. Not until we talked to him for some hours—I would say eleven o'clock.

Q. You took him in there at 7:30 and it was eleven before you charged him with being the murderer of his wife?

A. Around that time.

Q. During the interim time between 7:30 and 11 you and Mr. Battle had plied him with questions back and forwards?

A. Yes, we talked to him.

Defendant says therefore that the trial court erred in [fol. 431] in allowing any testimony by any witnesses of the State to the effect that Ashcraft had admitted either orally or by written instrument that he had killed his wife. It was error on the part of the court so to do for the reason that the constitutional rights of the defendant Ashcraft seized upon this situation and that both Becker and Battle should have at once, when they charged the defendant with having murdered his wife, had issued a warrant formally charging him with the murder of his wife, taking him at once to a committing Magistrate for a preliminary hearing so that he, the said Ashcraft, might plead to the said charges.

It was error for the further reason that the record and evidence in the case clearly and definitely shows that when they charged him formally with murdering his wife prior thereto or thereafter he was ever advised that he had a right to have the advice of counsel; that any statements or admissions made by him could and would be used against him in court where he would be on trial for his life.

It was error for the further reason that the record clearly shows that any and all admissions either written or oral, made by the defendant Ashcraft to Mr. Becker or General Battle or any other person were made by the defendant Ashcraft freely and voluntarily, but the record on the other hand shows that any alleged admissions or confessions made by him were made under duress when he was subject to physical appliances in the nature of high powered lamps and light, that he was kept in one room thirty-six hours and all psychological as well as physical devices were used in an effort to secure not a fair investigation, but in order to secure a confession of guilt, and he was held in said room until it was thought that a confession of guilt had been secured satisfactory to both Assistant Attorney General Battle and Chief Investigating Officer Becker.

Defendant further says that this was an error for the [fol. 432] reason that he, defendant Ashcraft, in this room on the 5th floor of the county jail beginning at approximately 7 o'clock Saturday night and continuing until eight or nine o'clock the following Monday morning, was by the State's witnesses who testified consisting of officers and deputies of the staff of the Sheriff's office and first assistant prosecuting attorney Battle, charged with the murder of his wife, tried and convicted because as it is testified, he voluntarily and without any promise or hope of reward confessed that he murdered his wife after this long investigation and quiz-ing. He was under the power of the Sheriff's deputies and the prosecuting attorney office who set themselves up as quasi judicial tribunal and tried him there and convicted him there and in so doing rendered a trial of him, the defendant Ashcraft, before the trial court in this case and the jury of peers trying him a mere formality.

He says for this reason he should be given a new trial.

H

The court erred in allowing witnesses for the state to testify and to introduce in the record a paper writing purported to be a statement or alleged confession by the defendant Ashcraft in this case as evidence over the objection and exception of the defendant, for the reason that it is shown beyond contradiction in the record that said paper writing or instrument was never presented to the defendant Ashcraft for perusal or reading until he had already been

submitted to committing Magistrate Hugh Mageveny for preliminary hearing and had pled "not guilty", but was still held on the same floor in the county jail and under force and duress by persuasive means and efforts demanded that he sign said papers writing which he refused to do.

This was error for the further reason that the record shows the committing magistrate while he was being arraigned there at the preliminary hearing never at any time advised the defendant of his constitutional right, that is to say, he was entitled to counsel, that any statements made [fol. 433] might or would be used against him in the trial of his case for his life, or any of his other constitutional right made known to him.

III

Defendant avers that the court erred in allowing the state through its prosecuting attorney, over the objection and exception of the defendant, to ask the defendant Ashcraft with reference to trouble or troubles that he had had with former wives. Testimony on this subject is found on page 492, through 504 of the record. This was an error because the evidence was irrelevant, incompetent for any purpose and was highly prejudicial to the rights of this defendant.

Wherefore defendant says that he should be granted a new trial in this cause to the end that his rights may be protected and justice meted out to him.

Jas. L. Bickers, Attorney for Defendant.

[File-endorsement omitted.]

[fol. 434] IN CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

49904

STATE OF TENNESSEE

VS.

E. E. ASHCRAFT & JOHN WARE

ORDER SETTLING BILL OF EXCEPTIONS—January 13, 1943

Thereupon counsel for the defendants E. E. Ashcraft and John Ware for and in their behalf presented to the Court

a bill of exceptions consisting of all of the evidence in the case and all the exhibits presented at the hearing of the cause; the charge of the Court, defendant's motions for new trial including all the proceedings had in the cause, and the Court after a full examination of said bill of exceptions finds said bill of exceptions in all things correct and proper and orders same, after having signed, authenticated and sealed the said bill of exceptions, made a part of the record in this cause, and it is so ordered; adjudged and decreed.

James J. Pleasants, Jr., Judge.

1-13-43.

OK. Bickers, Atty. for Ashcraft.

OK. Samuel S. Pharr, for the State of Tennessee.

OK. W. A. McTighe, Atty. for John Ware.

[File endorsement omitted.]

EXHIBIT No. 1

[fol. 435] Statement of JOHN WARE, alias Tom Ware, age 20, residence Oriole Street, works at Mid-South Pipe Company, Memphis, Tennessee, charged with the murder of Mrs. Zelma Ida Ashcraft on Thursday, June 5, 1941, made at the County Jail to Deputy Sheriff George A. Becker, in the presence of Assistant Attorney General Preston Battle; Henry S. Waldauer, court reporter..

Questions by Mr. Becker:

Q. Now, Tom—

A. Yes, sir.

Q. You are in jail, charged with the murder of a white woman by the name of Zelma Ida Ashcraft on the early morning of June 5, 1941; and it is my duty as an officer to tell you that any statement you might make to me about this murder must be freely and voluntarily made, and it can and will be used in court against you. Knowing that, are you willing to give me a truthful statement about how you killed this woman? Are you?

A. Yes, sir. I have already done it now.

Q. You say you already done it?

A. Yes, sir.

Q. Did you kill Mrs. Ashcraft?

A. Me?

Q. Yes.

A. Yes, sir.

Q. What did you kill her with?

A. A rock.

Q. In your own way, I want you to go ahead and tell all that you know about this killing.

A. Well, the nearest time I knowed him was in—I can't get the month. Let me see. This is June?

Q. Yes, this is June.

[fol. 436] A. What comes before June?

Mr. Battle: May.

A. Well, April. It was about the 15th of April.

Q. Of this year?

A. Yes, sir; when I knowed him.

Q. What was Mr. Ashcraft doing at the time, and what were you doing, and where were you working?

A. At the time we were over here by Sears & Roebuck, we were on a pile driver. He was operating the pile driver, and I was working on the pile driver as a laborer. Well, I started to riding with him. Do you want me to tell you how I started to riding with him?

Q. Yes.

A. One evening I did not have no street car fare, and I was over at Sears Roebuck, and I asked him, "Which way do you go, boss?", and he said, "I go over to Chelsea", and I asked him would he let me go with him, and he said yes, and I go over with him, and he said, "I come through here every morning, and I can pick you up on Chelsea", and he began to pick me up that way; and about the second morning after I was riding with him he asked me about this conversation, he told me about a boy who was a friend of his, and his wife was gone to California to take a trip, and this friend of his had a woman, outside woman—I will tell you like he told me—he had an outside woman, and his wife was coming home, and he wanted to get rid of this woman, because he had tried to make her leave and she would not, and this fellow was giving him \$100.00, and he was going to get somebody—he did not have nerve enough to do it, and he was going to get some help on it, and he talked to me, and

I did not turn him no answer until the fifth or sixth time [fol. 437] after he had put the question to me.

Q. What was that question, Tom? That is what I want you to tell me.

A. He asked me did I have nerve enough to help him do the job.

Q. Do the job?

A. That is right; that is what he told me; he said "job". That is what he said to me. He asked me did I have nerve enough to help him do the job. I am telling it like he told me. I knew what he meant by the "job". He asked me did I have nerve enough to kill this woman, but he said "job", and I am telling it like I got it from him.

Q. That is what I want.

Mr. Battle: That is all we want, just what happened.

Q. Go ahead.

A. I told him I did not want to do it, and I am telling it to you just like it was, and he said "this job". When he first asked me to do it, I never told him I would, and then later on I told him that I would. He said for me at first to call him out, like I wanted to buy a stove like he had, and I was going to sit on the porch in front, and he was going to call the woman out, and then when they got out there, for me to act like it was a hold-up, and get them both in the automobile, and to do the job that way, and after he had told me about it,—I was to quit work on the job and to get another job another place, and then I was to get in touch with him. Now that was during the month of April, I don't remember what day it was, but that is when he was telling me what he wanted done.

Q. Now when did it happen? Look up there at the calendar, and see if you can tell me the day it happened.

[fol. 438]. A. What day it happened? Let me see. The day of the month?

Q. Yes.

A. Let me see. Today is Sunday. It was the week beginning the first of June. You want me to tell you what day it was. It was the 5th—yes, that is right—it was on the 5th that I killed the woman.

Q. Go ahead.

A. After the job was done—

Q. Wait a minute. Tell about the day before you did the job, when you met him.

A. The day he met me on the street, he taken me on to Oriole Street in his automobile, and he stopped, and he sits down and tells me to hold up my head and don't be looking downhearted, like I am scared, because it is nothing to be done—I am telling it like it was—he says it has to be done now, and if you don't see me any more, he says it will be done then. I rode on out to the drug store, and got out of the automobile.

Q. What drug store did you get out?

A. The colored drug store on Chelsea, and then he came back to my house on Oriole Street the following night at 8 o'clock sharp, and he asks me to get in the car, and he takes me out to this place, he says me and him will spot the place, and then we comes back and he puts me out of the automobile, and we sits up on the bridge there on Chelsea and Oriole.

Q. You did what?

A. Gets out of the car, and we were on the bridge there on Chelsea and Oriole.

Q. Who was that? You say "we".

[fol: 439] A. Who is that?

Q. Yes.

A. Johnny Ashcraft. He was driving the car.

Q. Then what did you do?

A. I sat on the bridge on Chelsea and Oriole. I sat there 15 minutes, and I gets off of the bridge, and walks down the road two or three times, and then I goes home. I had sat there on the bridge for 15 minutes, and then I gets up and goes to bed. Wednesday night at 1 o'clock he comes to my house and knocks on my door.

Q. You say "he". Give us the name of the person who came to your house.

A. Johnny Ashcraft. He gets me up. He comes there to get me to go ahead. He eases in the house and leaves his car parked, and there is a little dog that keeps barking, and he comes out and scolds at the dog.

Q. Was the dog barking at your house?

A. Sir?

Q. Was the dog barking at your house?

A. No, at his house.

Q. You haven't left your house yet. He came to your house in the car.

A. Yes, sir; he came there in the car, and I got up, and I went out of the back door, and got in the automobile with

him, and he drives to his home, and he drives in the driveway, and cuts the lights off, and gets out. I got out of the car on the outside, and he goes in the back, and I stays there, and I stays there about two hours, or three, I just stays there, and he has been in the house, and he comes out of the door and tells me that she will be ready in a few minutes.

[fol. 440] Q. He came out and told you. Who did?

A. Johnny Ashcraft comes out, and he tells me that she will be ready in 15 or 20 minutes, and first he brings out a black hat in a paper bag. Next he brings out a grip, and puts the grip in the car, and then he goes back, and Johnny Ashcraft tells me, he says, "All right, now, she will be out in 15 minutes, and don't do any dribbling at it", and he goes back in the house, and comes back again, and him and her comes out, and I eases around the car and grabs her, and she hollers, and Johnny Ashcraft tells her, he said, "Don't holler; it is two of them, don't holler, it is two of them", and I tells him to get in the car, and her too, and he asked her, "Will you drive", and she said, "Yes, I will drive", and she gets in the car, and he got in the car, and he said, "I haven't got any money", and he asked her if she had any money, and she said, "Yes", and she said she had \$50.00, and she gave me \$50.00; and so we goes on out Chelsea, and on out Jackson—I don't know all of the streets out there, and I gets to the spot out there, and I have them to stop the car, and when the car is stopped, he gets out of the car, and she gets out of the car, and walks down the little dirt road, and he comes to me and tells me to make her take off the wrist watch, that he might want that. She takes it off, and I takes the wrist watch and I slips it to him, and I tells the woman that I was going to put her in the river first, and then her husband,—both of them, and she screams and hollers, and he grabs her and says "Let her have it", and I let her have it.

Q. Who grabbed her?

[fol. 441] A. Johnny Ashcraft.

Q. You let her have it. What do you mean?

A. I hit her.

Q. With what, and where did you get it?

A. A rock.

Q. Where did you get the rock?

A. The rock was laying down there, a white rock. It was already down there, and after I hit her—I don't know how many times it was.

Q. Where was she when you hit her?

A. In the water.

Q. What did you do with the rock?

A. Put it in the water too.

Q. Did you throw the rock at her, or hold it in your hand?

A. Turned it aloose.

Q. I mean as you hit her?

A. Sir?

Q. While you were hitting her in the head did you hold the rock in your hand?

A. No, sir; turned the rock aloose; threw it and hit her.

Q. You threw it and hit her?

A. Yes, sir.

Q. How many times did you throw it at her and hit her?

A. I hit her with two rocks.

Q. How big a rock?

A. I don't know what size it was, and then he says, "That will do", and then he says, "Let's get away from here", and he says, "Everything is all right, and I owe you \$50.00, and I am going to the bank and draw the \$50.00 in a day or two, if no one comes up; I am getting out of the way", and that is the last word he tells me, and we leave; that is, I [fol. 442] don't see him no more.

Q. After that, after you had killed the woman, what happened then?

A. He tells me to take the pocket book, to take everything out of it, and to drop the pocket book down, and go away.

Q. What did you do then?

A. He said, "That makes them think it is a hold-up; it makes them think somebody was held-up, and we walks away, and we goes down the road a piece, and he stops, and tells me to keep going, and I keeps going, and that is the last time I saw him.

Q. How much money did you get?

A. He gave me \$50.00.

Q. How did he give you the \$50.00, or when?

A. He gave me \$50.00 that night.

Q. Where were you?

A. Where was I?

Q. Yes.

A. At his house.

Q. Where did he get the \$50.00?

A. Out of his wife's purse.

Q. Out of his wife's purse?

A. Yes, sir.

Q. What did you do with the \$50.00?

A. I rolled it up and put it in my pocket.

Q. Where is it now?

A. I spent it.

Q. What did you buy with it?

A. I don't know, sir, what all I did not buy with it. I spent it. I don't know what all I did not buy with it. I paid some of my bills with it, and different things.

[fol. 443] Q. What bills did you pay, who did you pay?

A. Let me see. I forgets that now. It was the Federal Clothing Company, for one.

Q. How much was it?

A. I paid him up.

Q. How much did you pay him?

A. Three weeks, \$3.00.

Q. \$3.00?

A. Yes, sir; paid \$3.00.

Q. Who else did you pay?

A. I owed a fellow \$15.00.

Q. Who was that fellow?

A. I will call that name in a minute. I can't think of his name. I been knowing the man 3 years, and can't call his name. Mr. William Stokes. He is a cow buyer, and he buys cows and different things.

Q. Where does he live?

A. I don't know. He don't stay in one place long.

Q. Can't you remember his name?

A. William Stokes.

Q. William Stokes?

A. Yes, sir; William Stokes.

Q. A cow buyer?

A. Yes, sir; a cow buyer. I met him coming from Abraham's and paid him \$15.00.

Q. What did you owe him \$15.00 for?

A. It was when it snowed, when snow was on the ground, and I borrowed \$15.00 from him. I was out of work, and he let me have \$15.00.

Q. Who else did you pay off?

A. I did not pay anybody else off.

[fol. 444] Q. What did you do with the money?

A. I bought these trousers I got on now.

Q. Where about?

A. I don't remember the name of the store.

Q. Where was the store located?

A. On Main Street.

Q. On Main Street?

A. Yes, sir.

Q. How much did you pay for the trousers?

A. \$4.98 for the trousers.

Q. What else did you buy?

A. I bought some groceries with it, and the rest of it I had a good time off of it.

Q. What do you mean by a good time?

A. Nothing but drinking beer and having a good time.

Q. What kind of a good time?

A. I went to West Memphis and shot craps over in West Memphis.

Q. You shot craps?

A. Over in West Memphis; yes, sir.

Q. Was there a ring on the woman's finger?

A. No, sir.

Q. You did not see a ring there?

A. There was not no ring, it was nothing but a wrist watch, and he told me to take the wrist watch off and to hand it to him, and he told me to keep walking and don't look back.

Q. Did you get a little leather pouch with her dress or under clothes in it?

A. No, sir.

Q. Did you get any blood on your clothes?

A. No, sir.

Q. What kind of clothes did you have on?

[fol. 445] A. The clothes I had on was some old khaki pants, and I burned them up because they were full of grease.

Q. You burned them up because they were full of grease?

A. Yes.

Q. Where did you burn them?

A. The Mid-South Pipe Company, on Chelsea.

Q. Do you remember the day you burned them?

A. Yes, sir.

Q. What day?

A. Last Monday.

Q. Last Monday?

A. Yes, sir.

Q. Now when you hit Mrs. Ashcraft on the head with this rock did you hold it in your hand and pound her on the head with it, or just go ahead and tell us how it happened?

A. I hit her with the rock, with the two white rocks.

Q. You first pushed her in the water?

A. First tried to push her in the water, and I could not, and me and her husband, Mr. Johnny Ashcraft—me and him both put her in the water.

Q. All right.

A. And then I knocked her in the head. He handed me the two rocks, one by one, and I hit her with the first rock, and he said, "Hit her again", and I hit her again, and he said, "Let's walk away", and we walked away.

Q. Nobody has mistreated you in any way since you have been up here, have they?

A. In no way.

Q. Nobody has promised you anything at all?

A. No, sir.

Q. That is since you have been up here, or at any time?

A. No, sir.

[fol. 446] Q. Has anybody laid the weight of a hand on you since you have been up here?

A. No, sir.

Q. The statement that you have just made was made of your own free will?

A. Yes, sir.

Q. And why was this statement made?

A. Why was it made? I want to be straight with it. The reason the statement was made, I asked him—or I told him that I would not hold back; I told him if they ever got me for it that I was going to tell the whole story. I said, "I am not going to take your punishment myself if anything comes of it; I am going to tell it just like it was; I am going to tell it, about you and me too".

Mr. Becker: That's all.

John his X mark Ware.

Subscribed and sworn to before me, this the 16th day of June, 1941. Henry Waldauer, Notary Public. My commission expires Oct. 8, 1944. (Seal.)

[fol. 447]

EXHIBIT No. 2

Statement of E. E. Ashcraft, age 44, residence 3520 Stanton Road, Memphis, Tennessee, charged with the murder of his wife, Mrs. Zelma Ashcraft, on Thursday June 5, 1941, made at the county jail on Monday, June 16, 1941, at 7:12 A. M., to Deputy Sheriff Geo. A. Becker, in the presence of Sheriff Guy Joyner, Assistant Attorney General Preston Battle, and Robert Ezell, Investigator for the Attorney General's office; Henry S. Waldauer, court reporter.

Questions by Mr. Becker:

Q. Mr. Ashcraft, you are in jail, charged with the murder of your wife, Zelma Ida Ashcraft, on the early morning of June 5, 1941, and it is my duty as an officer to tell you that any statement you might make to me about this murder must be freely and voluntarily made, and it can and will be used in court against you. Knowing that, are you willing to give me a truthful statement about how your wife was killed?

A. Yes, sir.

Q. You are?

A. Yes, sir.

Q. Mr. Ashcraft, had you been planning the death of your wife?

A. I had been planing to do something like that since along in May, 1941.

Q. Who did you get to do this killing for you?

A. Well, this colored boy—what is his name—Tom Ware.

Q. Tom Ware?

A. Yes, sir.

Q. In your own way, I want you to go ahead and tell us, starting from the very beginning, the plans that you made and the agreement that you had with Tom Ware, to take the life of your wife, Zelma Ida Ashcraft.

[fol. 448] A. You want me to tell you the way I approached him, and all?

Q. Yes, sir.

Mr. Ezell: I want you to tell the first contact you had with him in regard to this matter.

A. We were working on the bowling alley on Cleveland, running a pile driver, and one evening he didn't have carfare, and he asked me which way I was going, and

I told him, and he asked me if he could go with me, and I told him yes, and he got in the car with me and got off on Chelsea. I don't know the name of that street out there, but it is in a negro subdivision where he lived, and I told him, "I will be going by here in the morning, if you want to ride back and forth you can", and he rode several mornings back and forth, and I asked him how he would like to pick up fifty or a hundred dollars doing a little job, and he said he would like to, said, "Yes, I will be glad to make that", and then there was nothing more said about it until he quit his job, and they transferred me over to the pumping station, and then on a Tuesday, it was on Tuesday before this Thursday morning,—I don't remember the date.

Sheriff Joyner: Tuesday, the 3rd of June?

A. That would be the 3rd, wouldn't it?

Q. Yes, the 3rd was on a Tuesday.

A. Yes, the 3rd; I saw him down on Chelsea, and I got him in the car with me, and we drove down close to this place, that is close to where you say the car was parked, this side of the water, and we turned around, and there was a road leading down there, and then I let him out at the negro subdivision, by a bridge, and he said, "I will be there Thursday morning", and about 3:30 he was there. When I came out there to put the grip and hat in the car he was standing on the left side, on the driver's side, and when my wife got in he opened the back door and got in [fol. 449] the back first, and he told her, "This is a hold-up; I want your money". She gave him some money, I could not tell what it was, but he gave him some bills, and he stepped over into the front seat and sat down, and he said, "Back out and take me where I want to go to, and you won't be hurt". He told me,—he said, "You go back in the house and don't make much fuss". They backed out, and I went back in the house, and that was the last I saw of him.

By Mr. Ezwell:

Q. At the time this negro got in the car did your wife scream?

A. She did not scream; no, sir.

Q. Did a dog bark?

A. The dog had been barking; yes, sir.

Q. Did you tell the dog to stop barking?

A. When I first brought the grip out I told him to keep quiet, and she stopped barking, and when the wife got in the car she barked a few times again.

Q. What money did you offer this negro?

A. I told him I would give him fifty or a hundred dollars.

Q. Fifty or a hundred dollars?

A. Yes, and I told him that she would have the money in her purse, and I guess he got it, because I don't know what was done with it, but he should have got it.

Q. Did you pay this negro any other money except what he got out of your wife's purse?

A. No, I did not pay him a dime.

Q. You did not?

A. No, sir.

[fol. 450] By Mr. Becker:

Q. You stated a few minutes ago that you told this negro about it. What did you mean by that statement?

A. Told him about it? About her going to make this trip.

Q. Did you tell him at that time that you wanted her killed, or done away with?

A. I said, "She is going to leave Thursday, going to make this trip, and I want you to make away with her", and he said, "Yes, sir". He told me he bought himself an alarm clock so he could get up around 12 or 1 o'clock that night. That is what he told me. I believe he said 12 o'clock.

Q. This watch that your wife had, did you take it off of her arm?

A. No, sir; he took that off and brought it back to the house when he came back to get his hat, and he came on back and left the back gate unfastened, and I went out on the back porch, and he said, "I left my hat", and he got his hat and left.

Q. When did he lose his hat?

A. As he was getting in the car.

Q. As he was getting in the car?

A. Yes, sir.

Q. Did you have any conversation with the negro when he came back after his hat?

A. No, sir. He just said, "I lost my hat, and here is the watch."

Q. Did he tell you at the time where your wife was?

A. No, he did not.

Q. Now this watch that the negro gave to you, what did you do with it?

A. I taken it in and laid it on the box.

[fol. 451] Q. Explain the box you are speaking of.

A. On the vacuum cleaner box, besides the bed.

Q. Is that your wife's bed?

A. Yes, sir.

Q. We questioned you about this watch before. Do you remember what you told us about the watch?

A. I told you it was in the drawer and she never left it there before,—didn't I?

Q. You told us it was in the drawer, and she had never left it there before?

A. Yes.

Q. What about the diamond ring that your wife had?

A. I don't know what went with that unless he got it off of her and kept it, or left it with the purse out there, or on the ground; but as far as the diamond ring,—I have never seen it.

Q. Why did you want to kill your wife, or have her killed?

A. Well, the only thing I can say is that she had just got so we could not get along. When company was there she was all right, but when they would leave you could not hardly stay in the house with her, and I offered to give her the car and the home and \$1,500.00 in money, I wanted her to take that and for us to separate, and she said, "No, by God, you are going to stay here with me from now on".

Q. Your sexual relations with your wife, what part did that have to play in the matter?

A. Well, I could not be with her really but around twice a month.

Q. Your wife was in a very delicate condition, wasn't she?

A. Oh yes, she was nervous, and had been that way for a long time.

[fol. 452] Q. The sexual relations that you had with your wife, were they enough to satisfy you?

A. No. I could have used more by a whole lot, but as a fellow said, I had to get along with it, because I did not get out and tom cat around.

Q. You said a minute ago that the ring was there on your wife's finger, or it was in the purse that the negro emptied out on the ground?

A. That is my belief. I could not state that as a fact.

Q. How do you know that he might have emptied it out on the ground?

A. He just said that a while ago, that he emptied the stuff out of the purse on the ground.

Q. We talked to you here a while back about this thing, and you made a statement to us that your wife had \$200.00 in a chamois bag pinned to her dress, or underclothes?

A. Yes, sir; and she gave me \$100.00 of it.

Q. When did she give you this \$100.00?

A. I believe it was May 31st, the best I remember.

Q. Was what?

A. May 31st.

Q. May 31st?

A. The best I can remember that is when it was.

Q. And did she have this chamois bag on her the night that she was killed?

A. Well, I don't know. She still had it on her or in her purse one, and I don't know which.

Q. Did you specify any particular place where this negro was to dispose of your wife?

A. No, I did not specify any special place.

Q. Did you tell the negro to make it appear as though [fol. 453] it was a robbery?

A. No, I just told him to make away with her,—that is all.

Q. What did you tell the negro to do with your automobile?

A. Just to leave it there.

Q. Just to leave it there?

A. Yes, sir.

Q. What was the idea you had in telling him to leave it at the scene?

A. In the first place, I did not want him driving it, and in the second place that is where she was taken out of it, and I wanted it left there.

Q. Why did you want it left there?

A. Well, I just did not want him driving it, and I was not going down there with him.

Q. You say you did not tell the negro to empty the purse out and make it look like a robbery?

A. No, I told him to empty it on the seat, and not on the ground.

Q. You told the negro to empty the purse on the seat?

A. Yes, sir.

Q. Not on the ground?

A. Yes, sir.

Q. What was your object in telling him that?

A. Well, I figured if there was some small stuff in it, if it was on the ground it would be lost, and whoever found it, they could find it on the seat.

Q. Why did you want anybody to find it on the seat?

A. Well, I do not know, but there may be something in it, and I wanted it left there, so that it could be found there; and if it was on the ground it may not be found, they would have to look for it.

[fol. 454] Q. What was your object in wanting anybody to find it?

A. I didn't want anybody to find it.

Q. You wanted them to find it because you wanted it to appear as a robbery, didn't you?

A. No, sir.

By Mr. Ezell:

Q. Didn't you tell me that?

A. That I wanted it to look like a robbery?

Q. Yes, that you wanted it to look like a robbery.

A. I might have.

Q. Didn't you?

A. I might have, I would not say for sure.

Q. Didn't you tell me the reason you told the negro to leave the purse on the seat was because you wanted it to appear as a robbery?

A. I believe I did.

Q. You did that?

A. Yes, sir.

By Mr. Becker:

Q. On Thursday, June 5th, after your wife was carried away, or on the preceding Wednesday night, did you go to work and work all day?

A. On what?

Q. Thursday, the 5th?

A. Yes, sir.

Q. What time did your wife leave home on Thursday, June 5th?

A. I would say 3:30.

Q. You would say 3:30?

A. Yes, sir.

Q. When you first told us about this negro man you told [fol. 455] us that he jumped on the car at your home and in your presence and threatened to burn your house down if you made any mention of it?

A. Yes, sir.

Q. What was your idea in telling us that?

A. Well, when he stepped into the back seat he said, "Don't you make no reports, or nothing, and I will shoot you and burn the place down", and he told me to go on back in the house and they backed out of the driveway.

Q. The reason that he told you that was because this was a prearranged plan between you and the negro?

A. No, I did not know nothing about how he was going to do it. I did not know nothing that he was going to do. This was voluntary on his part. I did not know that he was going to do it this way at all.

By Mr. Ezell:

Q. But you did know the reason the negro was there at the time, did you not?

A. Oh yes; I knew that.

Q. That is that he was there to kill your wife?

A. To make away with her. I would not say to kill her, but to make away with her.

Q. And that is what you wanted him to do?

A. I did not know whether he was going to kill her, but I thought he would make away with her.

Q. To make away with her,—by that you meant to get her out of the way, didn't you?

A. Yes, sir.

By Mr. Becker:

Q. Did you ride out in the car with this negro when he [fol. 456] killed your wife?

A. No, sir; I did not.

Q. You did not leave your home?

A. Not until I went to work, after he had come back and got his hat.

Q. After he came back and got his hat?

A. I had my lunch packed and was about ready to leave when I heard somebody coming in on the back porch. The day was breaking, and I looked, and he was back there, and he said he left his hat, and had to come back for it.

Q. What other conversation did you have with him at that time?

A. That is all that he said.

Q. Didn't you ask this negro what he had done with your wife?

A. No, sir. He took and just sailed out, and I never even looked to see which way he went, whether he went down Chelsea or back through the field.

Q. How did you get to work that morning?

A. I walked to the Hollywood car line.

Q. You walked to the Hollywood car line?

A. And got off at Bellevue.

Q. You got off at Bellevue?

A. And then walked down to the job. I met the superintendent about two blocks after I got off of the car, he caught up with me.

Q. Now, Mr. Ashcraft, since you were arrested and placed in jail have you been mistreated in any way?

A. No.

Q. Has anybody laid the weight of a hand on you?

A. They sure haven't.

Q. Have you been promised anything?

A. No, sir.

Q. No one has promised you one earthly thing?

[fols. 457-458] A. Nobody has promised me nothing.

Q. And the statement that you have now made to us is free and voluntary?

A. That is right.

Q. And you are making it for what purpose?

A. Well, to clear my conscience,—I guess you would call it.

Q. To clear your conscience?

A. Yes, sir.

Q. Mr. Ashcraft, what name, if any, did your wife call you?

A. John.

Mr. Becker: That's all.

Subscribed and sworn to before me, this the 16th day of June, 1941. ———, Notary Public. My commission expires Oct. 8, 1944.

[fol. 459] IN CRIMINAL COURT OF SHELBY COUNTY,
TENNESSEE

Murder in the First Degree, etc.

No. 49904

STATE OF TENNESSEE

vs.

E. E. ASHCRAFT and JOHN WARE

JOURNAL ENTRY OF VERDICT—Oct. 29, 1942

Comes the Attorney General on the part of the State and the defendants in proper person and by counsel of record, whereupon there comes into open Court same jury heretofore selected to try above cause, which jury, having been sworn well and truly to try the issue of traverse herein joined, a true deliverance make and a true verdict render according to the law and evidence, upon their oath do say the defendant Ashcraft Is Guilty of an Accessory Before the Fact to Murder in the First Degree with Mitigating Circumstances as charged and Fix His Punishment at Not More Than Ninety Nine Years in the Penitentiary and Defendant Ware Is Guilty of Murder in the First Degree With Mitigating Circumstances as Charged and Fix His Punishment at Not More than Ninety Nine Years in the Penitentiary; thereupon defendants move the Court for a new trial, which motion is set for hearing on November 19, 1942.

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

James J. Pleasants, Jr., Judge.

[fol. 460] IN CRIMINAL COURT OF SHELBY COUNTY,
TENNESSEE

Murder in the First Degree, etc.

No. 49904

STATE OF TENNESSEE

vs.

E. E. ASHCRAFT and JOHN WARE

JUDGMENT—Jan. 7, 1943

Comes the Attorney General on the part of the State and the defendants in proper person and by counsel of

record, whereupon there comes on to be heard defendants' motion for a new trial herein, which motion having been heard and fully understood by the Court is overruled and the defendants moved the Court in arrest of judgment which motion is likewise overruled; thereupon the Court proceeds to pass sentence which is that they be taken by the Sheriff and remanded to Jail and at his earliest convenience delivered to the keeper of the Penitentiary and therein to be confined at hard labor for a period of Not More Than Ninety Nine Years Each and that they pay the cost of this prosecution and that execution and mitimus issue. Thereupon the defendants prayed an appeal to the next term of the Supreme Court when sitting for the Western Division of the State at Nashville, which appeal is granted and the defendants, allowed one week to file their bill of exceptions herein.

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

James J. Pleasants, Jr., Judge.

[fol. 461] CRIMINAL COURT OF SHELBY COUNTY

May Term, A. D. 1941

STATE OF TENNESSEE,
Shelby County:

First Count:

The Grand Jurors of the State of Tennessee, duly elected, empaneled, sworn and charged to inquire in and for the body of the County of Shelby, in the State aforesaid, upon their oath, present that E. E. Ashcraft, alias "Johnnie Ashcraft" and John Ware, alias "Tom Ware" late of the County aforesaid, heretofore, to-wit on the 5th day of June, A. D. 1943 before the finding of this indictment, in the County aforesaid, did unlawfully, feloniously, wilfully, deliberately, premeditatedly and of their malice aforethought Kill and Murder Zelma Ida Ashcraft.

Against the peace and dignity of the State of Tennessee.

W. P. Battle, Jr., Attorney-General Criminal Court
of Shelby County, Tennessee Pro-tem.

[fol. 462] CRIMINAL COURT OF SHELBY COUNTY, MAY TERM,
A. D. 1941

STATE OF TENNESSEE,
Shelby County:

Second Count:

And the Grand Jurors of the State of Tennessee, duly elected, empaneled, sworn and charged to inquire in and for the body of the County of Shelby, in the State aforesaid, upon their oath, do further present that E. E. Ashcraft, alias "Johnnie Ashcraft" late of the County aforesaid, heretofore, to-wit on the 5th day of June, A. D. 1941 before the finding of this indictment, in the County aforesaid, did unlawfully, feloniously, wilfully, deliberately, premeditatedly and maliciously move, incite, counsel, hire, command and procure John Ware, alias "Tom Ware", to unlawfully, feloniously, wilfully, deliberately, premeditatedly and maliciously Kill and Murder Zelma Ida Ashcraft, and that in pursuance thereof, the said John Ware, alias "Tom Ware" did unlawfully, feloniously, wilfully, deliberately, premeditatedly and with malice aforethought Kill and Murder Zelma Ida Ashcraft.

Against the peace and dignity of the State of Tennessee.
W. P. Battle, Jr., Attorney-General Criminal Court
of Shelby County, Tennessee Pro-tem.

[Endorsed:] A True Bill. J. Thos. Wellford, Foreman of the Grand Jury. No. 49904. State of Tennessee. Indictment for Murder in the First Degree and Accessory Before the Fact to Murder in the First Degree, vs. E. E. Ashcraft, alias "Johnnie Ashcraft" and John Ware, alias "Tom Ware". Witnesses: Summon for State: Dep. Sher. George A. Becker—c/o Sheriff's Office, by order of W. P. Battle, Jr., Attorney General Pro-tem. Sworn by the Foreman of the Grand Jury to give evidence on this Bill of Indictment, on this, the 20th day of June, 1943. J. Thos. Wellford, Foreman of the Grand Jury; George A. Becker, Prosecutor.

[fol. 463] IN SUPREME COURT OF TENNESSEE

E. E. ASHCRAFT & JOHN WARE

VS.

THE STATE

JUDGMENT—July 3rd, 1943

Came the plaintiffs in error in proper person and by counsel, and also came the Attorney-General on behalf of the State, and this cause was heard on the transcript of the record from the Criminal Court of Shelby County; and on consideration thereof, the Court is of opinion that there is no reversible error on the record, and that the judgment of the Court below should be affirmed, and it is accordingly so ordered and adjudged by the Court.

It is therefore ordered by the Court that the plaintiffs in error, for the offense of murder and accessory, as charged in the indictment be delivered to the Warden of the penitentiary, or his agent, and be by him conveyed to the penitentiary of the State of Tennessee and there confined at hard labor for a term of not more than 99 years each commencing on the day of their reception at said penitentiary.

It is further ordered by the Court that plaintiffs in error be disqualified from holding any office under this State. The plaintiffs in error will pay the costs of the cause accrued in this Court and the Court below, and execution may issue from this Court for the costs of the appeal. A procedendo will be issued to the said Criminal Court of Shelby County directing that Court to proceed with the collection of the cost of the cause accrued herein in the manner provided by law.

The Clerk of his Court will issue a duly certified copy of this judgment to the Sheriff of Shelby County, which will be his authority for delivering the plaintiffs in error to the Warden or his agent; and also a duly certified copy hereof to the Warden of the penitentiary who will at once proceed to execute this judgment.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 463a] IN SUPREME COURT OF TENNESSEE

SHELBY CRIMINAL

E. E. ASHCRAFT and JOHN WARE, Plaintiffs in Error,

v.

STATE OF TENNESSEE, Defendant in Error.

OPINION

E. E. Ashcraft and a colored boy, John Ware, were convicted of having murdered Selma Ida Ashcraft, wife of plaintiff in error Ashcraft, on the morning of June 5, 1941. Ware was convicted as a principal and Ashcraft as an accessory before the fact and each was sentenced to ninety-nine years in the penitentiary. Following the overruling of their motion for a new trial, plaintiffs in error have appealed in error here.

The State relies mainly for a conviction on the alleged confession of the two parties accused, contending that Ashcraft hired Ware to do the actual killing, and that the motive of Ashcraft, who was the husband of the deceased, was to get rid of his wife on account of her bad health and nervous condition.

[fol. 463b] Mrs. Ashcraft's body was found in a slough just off what is known as the Raleigh Road, a few miles from the city limits of Memphis and about a mile south of the town of Raleigh. Her body was found floating on top of the water with two or three cut places on her head, and the doctor testified that these blows on her head were sufficient to produce death.

On the morning of June 5, 1941, Mrs. Ashcraft, as was her custom from time to time, started on her way to visit her mother in Kentucky. The proof shows that she left the Ashcraft home about three-thirty o'clock in the early morning of June 5. She and plaintiff in error Ashcraft arose on this morning and he prepared some coffee for his wife which she drank together with some fruit juice. The car was in the driveway and Ashcraft placed her bags in the car and she backed out of the driveway and left.

Late on the same afternoon the deceased's body was found, as above stated, in a slough near the Raleigh Road. The car which she was driving was found facing north on the left-hand side of the road. Her body was fished out

of the slough. There was no blood found on her head, in her hair, on her person, or elsewhere about her body; likewise there was no blood found about the automobile or any other place nearby. The record discloses that the deceased met her death about three-thirty o'clock or shortly thereafter on this same morning of June 5, 1941.

Plaintiff in error Ashcraft was in the employ of the Korsmo Construction Company which company was under a government contract doing a job of work on a project [fol. 463c] on Wolf River in North Memphis. Ashcraft is a highly skilled mechanic and operated a steam shovel and draglines. He appears to have been well trained for his line of work. He proved an excellent reputation.

There is nothing to show but what the home life of Ashcraft and the deceased was pleasant and happy. It appears that the deceased had been in ill health for some time with female trouble and that she was addicted to the use of the sedative Amytal and kindred medicines. Ashcraft and the deceased had no children. At the time of the tragedy they had a joint bank account in the savings department of the Union Planters Bank in which was deposited more than \$3600. They also had a checking account in the same bank in which there was a little more than \$600. They both saved their money and were purchasing the home in which they lived and held title to this property jointly.

It appears that Ashcraft and deceased had a number of friends, and on the afternoon and night before the death of the deceased four of their friends visited in their home, all being nurses or student nurses at the Methodist Hospital in Memphis. Ashcraft came in from his work about seven o'clock, dinner was prepared, and the guests remained until about nine or nine-thirty in the evening when Ashcraft and deceased drove the ladies to the Methodist Hospital where they were required to be on duty at ten o'clock. These witnesses testified that Ashcraft and his wife appeared to be in a happy frame of mind when they parted.

[fol. 463d] The record discloses that Ashcraft worked at his usual place of employment on June 5, that he got off from his work in the late afternoon, and that about six o'clock as he was nearing his home he was notified by police officers, who were near his home at the time, that his wife's body had been found out near Raleigh and that they

had found her driver's license near the car, and it was in this manner that Ashcraft was contacted by the officers. The officers talked to Ashcraft in his home for a while in an effort to gain some clue as to who had perpetrated the crime. He was then taken to the undertaking establishment and identified the body as that of his wife, and was then taken to the county jail where he was questioned until about two o'clock in the morning when he was taken to his home. He stated to the officers that he had no idea who could have perpetrated the crime because he knew of no enemies that his wife had.

The deceased had considerable money when she left on her trip but none was found at the scene of the tragedy. Her purse was open and some of the contents found by the side of the car. Ashcraft told one of the officers that he did not know how his wife's watch got into the dresser drawer where it was found by the officers in the home.

On the evening of Saturday, June 14, 1941, the officers came out to Ashcraft's home and took him into custody. They took him to an office or room on the northwest corner of the fifth floor of the Shelby County jail. This office is equipped with all sorts of crime and detective devices such [fol. 463e] as a fingerprint outfit, cameras, high-powered lights, and such other devices as might be found in a homicide investigating office. It seems that the officers wanted an additional explanation from Ashcraft with reference to his wife taking an Amytal tablet on the morning before she left on her trip, the condition of the hole in the rubber hose on his car, and the finding of the watch in the dresser drawer.

It appears that the officers placed Ashcraft at a table in this room on the fifth floor of the county jail with a light over his head and began to quiz him. They questioned him in relays until the following Monday morning, June 16, 1941, around nine-thirty or ten o'clock. It appears that Ashcraft from Saturday evening at seven o'clock until Monday morning at approximately nine-thirty never left this homicide room on the fifth floor. During this time there were several officers present.

Mr. Becker, Chief of the Homicide Bureau, testified that about eleven o'clock Saturday night he charged Ashcraft with the murder of his wife. At about eleven o'clock Sunday night, June 15, according to the State's proof in the record, Ashcraft broke and stated that a negro had killed

his wife. He was immediately accused by the officers of having hired a negro to kill deceased. It developed, according to Becker, that on several occasions plaintiff in error Ware had ridden with plaintiff in error Ashcraft; that Ashcraft knew the street on which Ware lived but did not know the house.

[fol. 463f] It appears that the officers went out and apprehended Ware and brought him to the county jail, and about seven o'clock on Monday morning the officers secured a confession from Ware implicating Ashcraft in this murder. Later on, about nine-thirty o'clock in the morning, a paper writing was presented to Ashcraft for his signature purporting to be his confession of the murder of his wife. He refused to sign it.

Shortly before eight-thirty o'clock on Monday morning, June 16, a justice of the peace was called by the Sheriff from his home to come to the county jail. At eight-thirty in the morning two warrants were issued upon the affidavit of Becker charging plaintiffs in error with murdering the deceased. Witnesses on the warrant were Matteer, Key, Davis and Becker. It seems that no witnesses appeared against either one of the plaintiffs in error. They were held, however, in the county jail.

Both Ware and Ashcraft repudiated the confessions, Ware stating that he was threatened with mob violence, and Ashcraft stating that he was subjected to such vigorous treatment that he did not know what he was doing or saying. The alleged confession of Ashcraft was that he was tired of his wife and that he paid this negro to kill her.

The record discloses a statement made by the plaintiff in error Ashcraft to the effect that the nervousness and irritability of deceased had gotten on his nerves to the point where he decided to get a divorce from her, but when he mentioned this fact to his wife and offered a property settlement in view of the economic circumstances, the deceased refused to contemplate such a divorce.

It seems that between 4 and 5 p. m. on the afternoon of June 5 the attention of parties in the vicinity of Raleigh was attracted by an automobile parked on the wrong side of the highway which had been there for some time. The Sheriff's office was notified and deputies sheriff sent to the scene, which was near the slough. Shortly after the officers reached the point where the car was parked the body of the

deceased was seen floating face down in the water, and the body was taken from the water for examination. As before stated, there were a number of cuts which the physician who attended the autopsy said were made by some jagged instrument. There was a severe cut on her nose. The doctor stated that she had not been assaulted. She was dressed in a dress buttoned up the front. All the buttons on the dress were fastened at the time the body was found. She was supposed to have \$200 in greenback in a sack hidden under the buttoned part of her dress. On the front seat cushion of the automobile was found a muddy footprint. This was preserved by some type of shellac or a similar substance and was later compared with the left footprint of the plaintiff in error Ware. Mr. Becker, who made the comparison, gives it as his opinion that the two footprints were identical. In the back of the car was a suitcase packed with lady's clothing, a hat in a paper bag on the rear seat, and a loosely thrown blanket on the front. Cigarette stubs of the Camel brand were found under this blanket. There was also found on the front [fol. 463h] seat a box of Amytal tablets containing 12 tablets, the same number she had previously purchased the night before. The contents of her purse were scattered partly over the front seat and partly near the side of the car. Identification of the remains was made by virtue of the driver's license of the woman.

After this examination the officers went to the home of the deceased, and Ashcraft came in about dark and was notified by the officers about the discovery of his wife. Ashcraft then, according to the testimony of the officers, made an inquiry as to whether or not his wife had been robbed of certain savings bank books which she was in the habit of keeping about her person. The officers found the wrist watch of the deceased in a drawer in her room. Ashcraft made a statement to the officers at that time that the deceased had taken an Amytal tablet for a headache before leaving, and that they had been having some trouble with the automobile due to a defect in the ignition system. He also stated that the deceased was in the habit of carrying approximately \$200 in a bag pinned in her underclothing in her bosom. When an examination of the clothing of the woman was made at the undertaking establishment no trace of this bag could be found.

On the same afternoon, June 5, the officers took Ashcraft to the Shelby County jail and there went over with him such information as he could give them upon the subject. This conference lasted until about 2 a. m. and then Ashcraft was discharged, to remain available to the Sheriff's office investigating this homicide. It might be noted here [fol. 463i] that when Ashcraft identified his wife's body at the funeral home he did not manifest any interest in her wounds, nor does it appear that he displayed any anxiety nor did he request that he be carried to the scene of the homicide, but contented himself by saying that he had no idea who perpetrated the murder.

It seems that for several days the officers interviewed various parties with a view of obtaining a clue as to who perpetrated the homicide. The more the investigating officers considered the facts with reference to the killing the more they discredited statements given by Ashcraft, particularly about the Amytal tablets, the condition of the car, and the wrist watch. On June 14, it being Saturday, at about 7 p. m. one of the officers went to the home of Ashcraft and brought him to the county jail for further discussion of the crime. When Ashcraft reached the jail Mr. Becker, Chief of the Homicide Investigating Squad, and Mr. Battle, Assistant Attorney General of Shelby County, were present and began to discuss the matter with Ashcraft. According to their testimony, they pointed out to him the fallacy in the story he had told them, the fact that the examination of the car failed to disclose any defect in its operation, and that the theory of robbery was not maintainable in the circumstances in that the suitcase and clothing of the deceased had not been disturbed, that the body of the deceased gave no evidence of having been in a struggle, and that having perpetrated a robbery there would have been no need to have slain the deceased. The officers testified that about eleven o'clock on this same night [fol. 463j] Ashcraft made a statement and admitted that the facts pointed toward him but that he was innocent, and about this time Becker made the accusation that he believed Ashcraft had killed his wife. From that time and subsequently for about twenty-four hours Ashcraft was questioned by various members of the Homicide Department seeking thereby to solve the killing. While Ashcraft tells of threats and rough treatment toward him, each of the four witnesses introduced by the State, positively deny

Ashcraft's testimony in this respect and testify that he was permitted to smoke, that he was fed whenever he desired nourishment, and aside from systematic questioning no form of pressure was exerted. About 11 p. m. on Sunday night, or about twenty-eight hours after Ashcraft was brought to the jail, he asked Mr. Becker, who was then in his presence, if he might talk to Mr. Ezzell, another officer. Ezzell came into the room and Becker testified that Ashcraft made the following statement, which Becker stated was freely and voluntarily given without any hope of reward and without any threats:

"He told me that a negro had killed his wife. I said 'If a negro killed your wife, you probably hired him to do it.' He said 'No.' I asked him who the negro was and he said Tom Ware. I asked him if he knew this negro and he stated he did; that the negro had worked with him on the bowling alley job and also stated that he had ridden the negro in his car on several occasions, and we asked him how it happened and he stated that when he put the stuff in his wife's car and she got in, the negro got in the back seat [fol. 463k] of the car and put his arm around his wife and took her pocket book and climbed over and got in the front seat and told her to back the car out of the drive and that the negro said to Mr. Ashcraft, 'You old bald-headed son of a bitch, get back in the house and if you say anything about this, I'll come back and burn your house down.' I asked him if he knew where the negro lived, and he said he didn't know the name of the street, but could take us out there.' I said, 'Mr. Ashcraft, when that negro drove off, you had a telephone, why didn't you call the law and tell them that the negro had driven off with your wife?' and he said, 'That was a mean negro; I was afraid of him.' I said 'When you looked at that dead body of your wife, why didn't you tell us then who killed your wife?' and he said 'That's all right; I intended to take care of him.' "

The above statement having been made, Ashcraft was placed in the squad car and taken out for the purpose of locating Ware. The latter was located at his home and, after his identification by Ashcraft, was carried to the jail. Mr. Becker testified that the following happened at the jail: "A. They were brought to the jail and when we got to the jail they were immediately carried to my office on the 5th floor. We walked in the office. I asked Tom Ware 'Do

you know this white man?' and he said, 'Yes, sir, that's Mr. Johnny Ashcraft.' I asked him how he knew him, and he said 'I used to work with him on the bowling alley job.' I asked him when was the last time he was in the car with Mr. Ashcraft, and the negro hesitated and Mr. Ashcraft [fol. 463l] spoke up and said, 'John, you know it was on Thursday the 5th,' and the negro said, 'Boss, you all wants the truth, don't you?' and I said yes, and he said 'Mr. Johnny, I told you when this thing happened that if anything come of it I wasn't going to take the whole thing on myself.' Then the negro told us how it happened.

Q. I will ask you if, at any time after you, after you got the defendants in the homicide office, and Ashcraft was confronted with Ware, and those statements were made, whether or not there was any force or violence practiced on either of the defendants?

A. No, sir. They hadn't been in the office five minutes before Ware told us his story."

Immediately upon the making of this statement by Ware, Henry Waldauer, a court reporter of Memphis, was called for the purpose of taking down this statement. The court reporter reached the jail about 2 a. m. and reduced Ware's statement to writing and he signed the same by making his mark. While this was going on Ashcraft was placed in another room in the jail. Dr. McQuiston, who had been the family physician of the deceased and had attended Ashcraft for a spell of sickness was called to the jail and he made a physical examination of Ware and later one of Ashcraft. According to the testimony of Dr. McQuiston and others who were present, Ware showed no indication of any physical violence and neither did Ashcraft. Dr. McQuiston said that Ashcraft did not look any the worse or badly fatigued over his loss of sleep. Dr. McQuiston further testified that after Ware's statement had been transcribed and signed by him Ashcraft was brought into his presence and, according to this witness, made the statement [fol. 463m] with reference to the irritable nature of his wife and its effect upon him and also the statement that he had hired Ware to do away with the deceased. Ashcraft then detailed how he had employed Ware to kill his wife. In the meanwhile two reputable business men of Memphis were called in and they testified that after the statement was

transcribed Ashcraft was given a copy and it was read in his presence, and while he agreed that it was true in every detail he declined to sign it, saying that he wanted to consult a lawyer before he signed the statement.

Ware's statement was in substance to the effect that he had been riding to work on some mornings with Ashcraft, that Ashcraft on one occasion made the proposition to him that he had a friend whose wife was out of town and who had taken up with a paramour during her absence, and that his wife was returning and he wanted someone to get rid of this other woman and he would pay \$100 to have her disposed of.

Ware's statement is further to the effect that about 1 a. m. on June 5 Ashcraft came to his house, picked him up and carried him to his own home, leaving him outside near the automobile to await the coming of the deceased. In a later statement Ware admitted that while he was waiting he smoked a number of cigarettes and threw them into the back end of the car. He stated that after Ashcraft came out and loaded the suitcase and other things of the deceased in the car he appeared, told them it was a holdup, and threatened to kill both of them. He stated that he asked the deceased for her money and she gave him what she had, approximately \$50, at that time; that he, Ashcraft and deceased, with deceased driving the car, went to this lonely [fol. 463n] spot; that Ashcraft directed him to stop the car and he then took deceased down the embankment to this water and shoved her into the water after first taking off her wrist watch and giving it to Ashcraft; that then when she was in the water he picked up two good-sized rocks and struck her on the head; and that Ashcraft promised him that he would see him in a few days and pay the remainder of the agreed price.

Ashcraft's statement is that he did not go with Ware and deceased to the scene of the homicide, but that he saw Ware get in the car with deceased and that they drove off, and that about daylight Ware returned to his home and brought him the wrist watch and likewise picked up his hat that he had lost at the car. On the trial of the case both Ware and Ashcraft denied having made the statements.

The plaintiffs in error rely upon a number of federal authorities, decisions of the Supreme Court of the United States, and among them is *Ward v. Texas*, 316, U. S., 547, 86 L. ed., 1663. It will be found from an examination of

those cases that the Court held that due process of law was denied by the admissions of confessions while the defendants were ignorant, illiterate, easily frightened, taken from their homes, and their will power was overcome by fears and mental torture.

Now, as to the plaintiff in error Ware, the record shows that the arresting officers had no intimation of any connection of Ware with the homicide until between 11 and 12 p. m. on the Sunday in question when Ashcraft made the statement that Ware had killed the deceased. While Ware [fol. 463o] claims some violence, yet the great preponderance of the proof shows that he was not mistreated and that he made his confession implicating Ashcraft within ten minutes after he reached the jail.

The proof shows that Ashcraft was a mature man and also shows him to be one of above the average intelligence.

In *Self v. State*, 65 Tenn. (6 Baxt.), 244, 253, it is said: "When confessions are offered as evidence, their competency becomes a preliminary question to be determined by the court. This imposes upon the presiding judge the duty of deciding the fact whether the party making the confession was influenced by hope or fear. This rule is so well established, that if the judge allow the jury to determine the preliminary fact, it is error, for which the judgment will be reversed: *Boyd v. The State*, 2 Hum., 39."

In the instant case the trial judge heard the witnesses as to their confessions out of the presence of the jury, and he held that under the facts he could not say that the confessions were not voluntarily made and, therefore, permitted them to go to the jury.

The case of *Rounds v. State*, 171 Tenn., 511, is not in point on the facts. There it appeared that a murder confession was obtained after six officers had successively questioned the accused from Monday until Friday morning, arousing the accused at frequent intervals and ultimately causing him to become hysterical, necessitating the attendance of a physician.

It is also insisted that Ashcraft was kept in custody of the officers for about thirty-six hours before he was arraigned before a magistrate.

[fol. 463p] The only two statutes which we have upon this question are sections 11515 and 11544 of the Code. Section 11515 provides that no person shall be placed in

jail until examination be first had before some magistrate. However, this section falls short of the requirement insisted on by the plaintiff in error Ashcraft that the law requires the immediate production of one arrested before a magistrate. Section 11544 provides that a private person who has arrested another for a public offense, shall take such arrested person before a magistrate or deliver him to an officer without unnecessary delay. Section 11540 provides that where a private person arrests another and delivers him to an officer, or where a bystander arrests one engaged in the public commission of an offense and delivers such arrested person to an officer, the officer *may* take such person before a magistrate. There is no requirement that there be no unnecessary delay, nor is there to be found any provision of law requiring such immediate arraignment before a magistrate.

According to the testimony of the witnesses for the State, at that time plaintiff in error Ashcraft had made no confession that he himself was implicated in the killing, but on the contrary he made the statement to the officers that his wife had been killed by a negro by the name of John Ware, and it was not until after Ware had faced Ashcraft that the latter made a complete statement.

In *Lisenba v. California*, 314 U. S., 219, 86 L. ed., 166, the Court concedes to each state the right to determine the question of the admissibility of confessions for itself, subject only to the overpowering requirement that the Four-[fol. 463q]teenth Amendment forbids the use by the State of anything contrary to the system of fair play to which American jurisprudence is accustomed.

Plaintiffs in error rely upon the holding in *McNabb v. United States*, — U. S., —, 87 L. ed., 579 which holds that it is necessary under an Act of Congress that the accused be immediately brought before a magistrate. However, in that case the majority opinion of the Court restricts its holding to the federal courts acting under an Act of Congress.

Plaintiffs in error also rely on the case of *Anderson v. United States*, — U. S., —, 87 L. ed., 589. In that case the defendants were subjected to severe examination under very unfavorable surroundings for a period of six days by both State and Federal officers. The facts in the last-cited case are somewhat analogous to the facts in *Rounds v. State*, *supra*.

In the instant case there was a temporary holding or arrest for examination purposes, and this is not a committal to prison within the spirit of our statute. Such an examination precedes a committal and an accused may be released before a warrant is issued. Under the facts of the instant case we hold that there was no unnecessary delay in arraigning the plaintiffs in error before a committing officer.

We have carefully examined all the testimony herein, and we are unable to say that the evidence preponderates in favor of the innocence of either of the plaintiffs in error. We are also unable to say that the confessions were not [fol. 463r] freely and voluntarily made. Both of the plaintiffs in error have had a fair trial and we decline to disturb the conviction.

It results that the judgment of the lower court will be affirmed.

Prewitt, Judge.

Mr. Justice Neil dissents.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 464] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR RECORD—Filed Sept. 21, 1943

E. E. Ashcraft and John Ware, appellants, in a petition for certiorari to the Supreme Court of United States, designates the following portions of the record to be incorporated into the transcript upon appeal granted in this cause:

1. The testimony of George Becker, Henry Waldauer, S. N. Castle, Bob Ezell, Everet Pidgeon, Hugh Magevney, E. E. Ashcraft, John Ware, Cora Taylor, E. E. Ashcraft, [fol. 465] George Becker, Bob Ezell, W. H. Key, Bob Ezell, W. P. Battle, H. L. Jayroe and Dr. McQuistion, direct and re-direct and cross and re-cross examinations.

2. The charge of the trial court and the opinion of the Supreme Court of Tennessee, with one member of that Honorable Court dissenting without filing a dissenting opinion.

3. The testimony out of the presence of the jury of Henry Waldauer, Bob Ezell and George Becker.

Jas. F. Bickin, Gen. McCormick, Attorneys for Appellants E. E. Ashcraft and John Ware.

Service accepted and copy furnished. This Sept. 21, 1943. Nat Tipton, Assistant Atty. Gen., by N. F. Barry, Assistant Atty. Gen.

[fol. 466] IN SUPREME COURT OF TENNESSEE

[Title omitted]

PRAECIPE FOR RECORD—Filed Sept. 22, 1943

For the record upon appeal to the Supreme Court of the United States, I hereby designate the following as being required in the transcript:

- (1) Indictment.
- (2) Verdict and judgment of the Criminal Court of Shelby County.
- (3) Opinion of Supreme Court of Tennessee.
- (4) Judgment of Supreme Court of Tennessee.
- (5) Testimony Becker, Tr. p. 100-159.
- (6) Testimony Ezell, Tr. p. 159-170.
- (7) Testimony Waldauer, Tr. p. 219-232.
- (8) Testimony Becker, Tr. 236-338.
- (9) Testimony McQuiston, Tr. 343-360.
- (10) Testimony Waldauer, Tr. 369-402.
- (11) Testimony Castle, Tr. 403-409.
- (12) Testimony Ezell, Tr. 422-438.
- (13) Testimony Pidgeon, Tr. 438-440.
- (14) Testimony Becker, Tr. 700-702.
- (15) Testimony Ezell, Tr. 702-703.
- (16) Testimony Key, Tr. 703-705.
- (17) Testimony Battle, Tr. 706-710.
- (18) Testimony Jayroe, Tr. 711-712.
- (19) This praecipe.

Nat Tipton, Assistant Attorney General.

[fol. 467-469] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 470] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS—October 25, 1943

On Consideration of the motion for leave to proceed
herein in forma pauperis,

It is ordered by this Court that the said motion be, and
the same is hereby, granted.

[fol. 471] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 25, 1943

The petition herein for a writ of certiorari to the Su-
preme Court of the State of Tennessee is granted:

And it is further ordered that the duly certified copy
of the transcript of the proceedings below which accompa-
nied the petition shall be treated as though filed in response
to such writ.

Endorsed on Cover: In forma pauperis Enter Grover
N. McCormick, File No. 47,884, Tennessee Supreme Court,
Term No. 391. E. E. Ashcraft and John Ware, Petitioners,
vs. State of Tennessee. Petition for a writ of certiorari
and exhibit thereto.. Filed September 28, 1943. Term
No. 391 O. T. 1943..

(9091)

FILE COPY

Office - Supreme Court, U. S.

FILED

SEP 28 1943

**CHARLES ELMORE GROPLEY
CLERK**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 391

E. E. ASHCRAFT AND JOHN WARE,

Petitioners,

vs.

STATE OF TENNESSEE.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF TENNES-
SEE.**

JAMES F. BICKERS,

GROVER N. MCCORMICK,

Counsel for Petitioners

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 391

E. E. ASHCRAFT AND JOHN WARE,

Petitioners,

vs.

STATE OF TENNESSEE.

**PETITION FOR CERTIORARI TO THE SUPREME
COURT OF THE STATE OF TENNESSEE.**

*To the Honorables, Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Petitioner John Ware was indicted by the Grand Jury of Shelby County, Tennessee, wherein he was charged with the murder of one Zelma Ida Ashcraft in Shelby County, Tennessee.

Petitioner E. E. Ashcraft was indicted by the same Grand Jury jointly with John Ware and was charged as being an accessory before the fact of the said murder.

They were tried by a jury in Division I of the Criminal Court of Shelby County, Tennessee, and convicted and sentenced by the jury to ninety-nine years each in the Tennessee State Penitentiary.

Appeal was perfected to the Supreme Court of Tennessee and on July 3 in an opinion rendered by Justice Allan M. Prewitt, the Court affirmed the case, Justice A. D. Neal dissenting, but filing no written opinion.

Certified copy of the opinion of the Supreme Court of Tennessee is attached hereto, made a part of this petition and is marked Exhibit "A".* We are also attaching to this petition a copy of the assignment of errors, brief and argument in support thereof filed in their behalf in the Supreme Court of Tennessee, making same Exhibits "B" and "C".**

Your petitioners are filing this petition in this Honorable Court asking for a review of this case to the end that their rights may be properly protected and adjudicated.

We are presenting to the Court with this petition, by and with the consent and agreement of the Attorney General of the State of Tennessee, all parts of the record filed in the Supreme Court of Tennessee which has any bearing upon the issues presented to this Court for consideration.

Statement of the Case.

We shall, if the Court please, make this statement of the case as concise and brief as we possibly can in accordance with the rules of this Court, but we do want to get before the Court a full and complete picture of this entire matter because it is felt that the rights of these defendants have been, as we think, beyond question violated and relief by this Honorable Court granted to them.

On the morning of June 5, 1941, Mrs. Ashcraft, as was her custom from time to time, started on her way to visit her mother in Kentucky. She had made her preparations to make this trip for several days. She was making the

* Printed in the record at page 346.

** Not printed.

trip alone as she had done many times before in this same manner. She left the Ashcraft home between three and three-thirty o'clock in the early morning of June 5.

She and Mr. Ashcraft on this morning arose and Mr. Ashcraft prepared some coffee for his wife which she drank together with a glass of fruit juice. The car was in the driveway and Mr. Ashcraft placed her bags into the car and she backed out of the driveway and waved good-bye to her husband and he waved back and she was on her way.

On the late afternoon of June 5, Mrs. Ashcraft's body was found in a slough just off of what is known as the Raleigh Road, a few miles from the city limits of the City of Memphis, and a mile or so south of the small town of Raleigh. She was dead. The car which she was driving was found facing north on the left hand side of the road, that is, the wrong side of the road.

The body of Mrs. Ashcraft was fished out of the slough and it was found she had two or three cut places on her head. The doctor testified that these blows on the head producing the cut places was sufficient to produce death. There was no blood found on her head, in her hair, on her person, on her clothes or any other place. There was no blood found anywhere about the automobile or any other place. It was shown that Mrs. Ashcraft met her death around 3:30 o'clock on this morning of June 5, 1941, or shortly thereafter. It was certainly around this time.

At the time Mr. Ashcraft was in the employ of the E. O. Korsmo Construction Company, which company was under a Government contract doing a large job of work on a project on Wolf River in North Memphis. Mr. Ashcraft is a highly skilled mechanic and operator of steam shovels, draglines and types of work of this kind, and is admittedly one of the ablest and most dependable men in his line of work among the contractors generally. He was held in the

highest esteem by his employers as this record beyond question reflects.

Mr. Ashcraft was a home loving man, treated his wife like a baby, gave her his pay check and she handled the business of the family. At the time of this tragedy they had a joint bank account in the savings department of the Union Planters Bank in which was deposited more than \$3600.00. They had a joint checking account in the same bank in which there was a little more than \$600.00. They both saved their money and were purchasing the home in which they lived and held title to this property jointly.

This couple had a large number of friends. On the very night before the death of Mrs. Ashcraft, that is to say, the evening of the 4th of June, at about 4:45 or 5 o'clock, four of their friends visited in the home of Mr. and Mrs. Ashcraft, who were, Miss Minich, Miss Hightower, a Mrs. Rollin Gibson and a Miss Rice, all nurses or student nurses at the Methodist Hospital in the city of Memphis.

Mr. Ashcraft came in from his work about 7 o'clock, dinner was prepared, a highball taken by several of them and a pleasant evening had by all. Around nine or nine-thirty in the evening Mr. and Mrs. Ashcraft drove these ladies to the Methodist Hospital where they were required to be on duty at ten o'clock.

Mr. and Mrs. Ashcraft according to these witnesses were in a most happy frame of mind. After leaving these ladies at the hospital Mr. and Mrs. Ashcraft drove back to their home in North Memphis, set the alarm clock for three the next morning and went to bed.

After Mrs. Ashcraft left the home on the morning of June 5, as aforesaid, Mr. Ashcraft lay across the bed for a little while, got up and reported for duty on his job and handled his steam shovel as usual all of the day. He got off from his work in the late afternoon and about six o'clock as he was nearing his home he was notified by police

officers who were near his home at the time, that his wife's body had been found out near Raleigh and that they had found her driver's license near the car, and it was in this manner that Mr. Ashcraft was contacted by the officers.

The officers talked to Mr. Ashcraft in his home for a little while in an effort to gain some clue as to who had perpetrated this crime. He was then taken to the undertaking establishment and identified the body as that of his wife, and was then taken to the County Jail where he was questioned until about two o'clock in the morning, that is to say, from around eight or nine until two the following morning when he was taken home.

He told the officers very frankly that he had no idea who could have perpetrated this crime because he knew of no enemies that his wife had. Mrs. Ashcraft had considerable money on her person when she left for her trip and none was found at the scene of the tragedy. Her purse was opened and some of the contents thereof found by the side of the automobile.

Mrs. Ashcraft was a frail nervous lady, had trouble in sleeping and took amytal tablets at times and took other medicine for headache. Mr. Ashcraft told the officers upon his first questioning that on the way to the hospital with their friends on this night of June 4, that Mrs. Ashcraft and one of the friends went into Halls Drug Store on the way and purchased some amytal tablets as had been her custom, and that he thought she had taken one of the tablets before she went to bed, and that he thought she took one of the tablets just before she started on her trip that morning. Mr. Ashcraft within the next week or ten days had one or more conferences with the officers investigating this case, they having told him not to leave the county, and in one of these conferences told Mr. Beckers, the Chief of the Homicide Bureau of the Sheriff's office, that if he had left the impression upon him that Mrs. Ashcraft had taken amytal

on the morning before she left on the trip he was mistaken in this regard, and that he was pretty certain that she did not so do.

In his first interview with the officers Mr. Ashcraft was asked about the condition of his car. He told the officers that the car was in good shape and that the only trouble he had had with it was that the anti-freeze in the radiator had caused a hole in the rubber hose connection at the top of the radiator, and that upon one or more occasions water had dripped down on the spark plugs and some trouble arose in starting the car.

In one of his early interviews with Mr. Becker, Chief Homicide Officer, Mr. Ashcraft had told him that he did not know how his wife's watch got into the dresser drawer where it was found by the officers in the home.

On the afternoon of Saturday, June 14, 1941, at about seven o'clock, the officers came out to Mr. Ashcraft's home and took him into custody. They took him to an office or room on the northwest corner of the 5th floor of the Shelby County Jail. This office is equipped with all sorts of crime and detecting devices such as a fingerprint outfit, cameras, high powered lights and such other devices as might be found in a homicide investigating office.

The officers, according to this record, wanted an additional explanation from Mr. Ashcraft with reference to his wife taking an amytal tablet on the morning before she left on her trip, the condition of the hole in the rubber hose on his car and the findings of the watch in the dresser drawer.

According to all the proof in the case it is uncontradicted that they placed Mr. Ashcraft at a table in this room on the 5th floor of the County Jail with high powered lights in his face and began to quizz him. They quizzed him in relays until the following Monday morning, June 16, 1941, around 9:30 or 10 o'clock. It is admitted that the defendant Ashcraft from Saturday evening at seven o'clock until Monday

morning at approximately 9:30 o'clock never left this Homicide room on the 5th floor of the Shelby County Jail. He was never out of the presence at any time of the officers having him in custody and he was quizzed as aforesaid in relays.

There was present during this quizzing and propounding of questions to him, First Assistant Attorney General Preston Battle; Mr. Becker, Chief of the Homicide Bureau; Mr. Robert Ezzell, the Attorney General's private detective; and Deputy Sheriffs Key and Jaroe. Mr. Key is the State's Assistant in the Homicide Bureau.

Mr. Becker stated that at about 11 o'clock Saturday night he charged Mr. Ashcraft with the murder of his wife. At about eleven o'clock Sunday night, June 15th, according to the state's proof in the record Mr. Ashcraft broke and stated that a negro had killed his wife. Immediately he was accused by the officers having hired a negro to kill his wife. About this time the officers had asked Mr. Ashcraft if at any time during his work he had ever carried any one home or ridden any one. In response Ashcraft told them he had ridden upon one or more occasions a negro by the name of John Ware and a white man by the name of Tackett. He was asked by the officers if he knew where Tackett and John Ware lived. He told the officers that Tackett was in Mississippi or Louisiana on a Government job and he thought he knew the street on which John Ware lived, but he did not know the house.

He was taken by the officers at around twelve or one o'clock Monday morning to the street on which Ware lived. The officers went in one house and it proved to be a place where Ware did not live. They went next door and found him and placed him in custody.

The record shows that about seven o'clock Monday morning or shortly before, the officers secured a confession from John Ware implicating Mr. Ashcraft in this murder.

Later on, that is to say, about 9:30 in the morning a paper writing was presented to Mr. Ashcraft for his signature purporting to be his confession of the murder of his wife. He refused to sign it.

Shortly before 8:30 o'clock on Monday morning, June 16, one Hugh Mageveny, a Justice of Peace in Shelby County, Tennessee, was called by the Sheriff from his home to come to the County Jail. At 8:30 in the morning two warrants were issued upon the affidavit of Mr. George Becker, Chief of the Homicide Bureau of the Sheriff's Office of Shelby County, Tennessee, charging E. E. Ashcraft and John Ware with murdering Mrs. Zelma Ida Ashcraft. Witnesses on the warrant were Deputy Sheriffs Mateer, Key, Davis and Becker. They were summoned to appear at 8:30 A. M. to testify at the preliminary hearing of Ashcraft and Ware.

Ashcraft was arraigned first and no witnesses appeared or testified and no one was in the room but Mageveny and Ashcraft and this was in the same room on the 5th floor of the Shelby County Jail where Ashcraft had been all the time since Saturday evening at 7 o'clock. Mageveny read the warrant and asked Ashcraft to plead to it and Mr. Ashcraft pled "not guilty".

The record shows beyond contradiction that the committing Magistrate Magevney did not advise E. E. Ashcraft that he was entitled to be represented by counsel or that he told him that any statements he might make might be used against him in any trial that he might undergo in the Criminal Court of Shelby County, Tennessee. Justice Hugh Magevney had an office in downtown Memphis at 119 Madison, many blocks from the jail.

After his arraignment by the Justice of Peace, Assistant Attorney General Battle and other investigating officers continued their quizzing of the defendant Ashcraft and about 9:30 in the morning the paper writing above referred

to purporting to be his confession was presented to him for his signature and he refused to sign it. He was asking for counsel to advise him. This request was made of Becker and others and his requests were refused at all times.

At the same time there in the same manner the preliminary hearing of John Ware was had by Justice Magevney, no witnesses appearing or testifying, no instructions given him as to his constitutional right, that is, his right to counsel and the advice that any statements made might be used against him in any trial he might have, and a plea of not guilty entered for John Ware.

These defendants stand convicted solely and alone upon the alleged confessions and admissions said to have been made by them, which said alleged confessions and admissions were as we contend erroneously allowed to be considered by the jury convicting them. We feel that it would not be controverted by the State of Tennessee that if these alleged confessions and admissions by these defendants are illegal as evidence these convictions can not be possibly allowed to stand. There is utterly no other evidence in the record to sustain the convictions.

Specification of Errors.

1. THE ALLEGED CONFESSIONS, ORAL OR WRITTEN ALLEGED TO HAVE BEEN MADE BY DEFENDANT ASHCRAFT AND WARE ARE ILLEGAL AS EVIDENCE BECAUSE THEY WERE NOT FREELY AND VOLUNTARILY SECURED OR GIVEN, AND THEIR CONSTITUTIONAL RIGHTS BOTH UNDER THE CONSTITUTION OF THE STATE OF TENNESSEE AND THE CONSTITUTION OF THE UNITED STATES, PARTICULARLY THE "DUE PROCESS" CLAUSE OF THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES WERE RUTHLESSLY OVERRIDDEN AND VIOLATED BY THE CONSTITUTED AUTHORITIES OF THE STATE OF TENNESSEE AND SHELBY COUNTY IN SECURING SAME.

2. ALLEGED CONFESSIONS AND ADMISSIONS EITHER ORAL OR WRITTEN ALLEGED TO HAVE BEEN MADE BY DEFENDENTS ASH-

CRAFT AND WARE IN THIS CASE SECURED AND EXTORTED IN THIS CASE AND BY THE MEANS USED ARE ILLEGAL FOR ALL PURPOSES AND ARE INADMISSIBLE AS EVIDENCE AGAINST THEM.

Supporting authorities:

Polk v. State of Tennessee, 170 Tenn. 271;
Cross v. State of Tennessee, 140 Tenn. 510;
 Code State of Tennessee (1932), Sections 11,547, 11,548, 11,549, 11,554 and 11,555;
Brahm v. United States, 42 L. Ed. 568, 169 U. S. 532;
Ziang Sung Wan v. United States, 266 U. S. 1, 69 L. Ed. 131;
Chambers v. Florida, 309 U. S. 227, 84 L. Ed. 419;
White v. State of Texas, 310 U. S. 530;
Lomax v. State of Texas, 313 U. S. 544;
Vernon v. State of Alabama, 313 U. S. 547;
Canty v. Alabama, 309 U. S. 628;
Benjamin McNabb et al. v. United States, 87 U. S. L. Ed. 579;
Mitchell Clifton Anderson v. United States, 87 U. S. L. Ed. 589.

We shall discuss the above set out two specification of errors jointly:

Argument.

We submit that the record in this case plainly and obviously shows that any statements or alleged confessions as made by E. E. Ashcraft and John Ware testified to by the witnesses were made under duress and under circumstances that clearly shows they were not freely and voluntarily made, and that the action of the witness Becker and other and the Attorney General, in his representation and treatment of them, the defendants, was in violation of their rights under the Constitution of Tennessee and also the Constitution of the United States as aforesaid.

We have already stated that the record shows without contradiction that the defendant Ashcraft remained in this

room on the 5th floor of the Shelby County Jail from 7 o'clock Saturday evening, June 14, 1941, until Monday morning, June 16, 1941, without the aid of counsel, without being permitted to communicate with friends, alone and helpless, not allowed to have any rest or sleep, and according to his testimony not allowed to respond to the laws of nature, and was under the constant cross examination in relays of the officers of Shelby County, Tennessee, the Attorney General's office and the First Assistant Attorney General of Shelby County, Tennessee, Mr. Preston Battle. This we assert can not be countenanced or approved by any appellate court.

Witness Becker testified in this record that after he and the Assistant Attorney General Battle in this room on the 5th floor of the County Jail questioned the defendant Ashcraft for several hours, became exhausted physically and retired for rest and sleep.

Thereupon two other officers took over the quizzing of Ashcraft and they became exhausted and retired for rest and sleep. Then other officers took over. However exhausted and tired the officer became by reason of their quizzing Ashcraft admittedly was never allowed any rest or sleep for more than thirty-six hours or until the alleged confession was made. If the officers quizzing him became so exhausted as to require rest from fatigue and exhaustion, it is reasonable to assume that the defendant Ashcraft became and was physically exhausted.

It is admitted by all witnesses that he was never allowed to sleep or rest or to get out of this room on the 5th floor of the County Jail of Shelby County, Tennessee.

The defendant Ashcraft was brought in for examination and investigation, according to the State's proof, upon the flimsy pretext that they wanted to examine him further on the question of whether or not his wife took amytal before

she left on her trip and for an explanation of the leak in the rubber water hose connected with the radiator of his automobile. According to the State's witnesses he was not under arrest, he was not charged with any crime and was held incommunicado as aforesaid illegally without any warrant for thirty-six hours.

It is significant that the Attorney General's office and the Sheriff's office took this defendant in custody on Saturday evening at 7 o'clock when all the Judges in Shelby County had closed their courts and were on their week end vacations and rest, and when no fear on their part could be entertained reasonably that a writ of habeas corpus would be sued out. He was taken in custody in his home where he was alone and no friend of his or any other person so far as the record shows knew or had opportunity to know of his whereabouts.

Chief Homicide Officer Becker testified frankly that he was going to keep defendant Ashcraft in custody in the room on the 5th floor of Shelby County, Tennessee, until he made a "satisfactory" explanation to him. Here is what he had to say:

"Q. If you hadn't gotten an explanation about those three inconsequential matters in 16 hours, how much longer do you think you would have kept him to get that explanation?

A. I don't know. That's something that didn't come up.

Q. What didn't come up?

A. About how long I would have stayed there; but I'll tell you this: that if he hadn't admitted it, he would still have been charged with murder on those three inconsequential matters as you call them.

Q. You mean now to tell this jury that if he hadn't later said what you say he said there would have been a charge of murder placed against him?

A. I do." (R. 96.)

What is more, Assistant Attorney General Battle, who was as aforesaid in on this cross-examination of Ashcraft from the beginning, admitted that as a part of his cross-examination and interrogation; which we interpolate here to say, is the longest cross-examination of any one witness that it has been our experience to observe, and particularly when he did not allow his witness to have any sleep or give him any quarter or consideration; he read to him from the Bible about nine or ten o'clock Sunday night before Ashcraft had shown, according to State's testimony, any signs of yielding. What portion of the Holy Scriptures Mr. Battle read to him he was not able to say, except the Commandment "Thou Shalt Not Kill," nor was he able to give any reasonable purpose for his Biblical exposition.

Seriously, may it please the Court, it is perfectly obvious from the reading of Becker's testimony and General Battle's testimony that they were both determined to wring an admission of guilt from this defendant Ashcraft by any means, foul or fair.

This same Sunday night about eleven o'clock, according to the testimony of Becker and Battle, defendant Ashcraft was asked if he had ridden any person in his automobile to or from his work. It was then that Mr. Ashcraft related that he had upon one or two occasions driven home or to work a white man by the name of Tackett and a negro boy by the name of John Ware. It was then that the defendant John Ware came into the picture. The officers about 1:30 Sunday morning went out and took into custody John Ware, this twenty year old negro boy and literally scared him to death, and then started in on the cross-examination of Ware.

It is extremely significant here to call the attention of the court to the fact that Attorney General Gerber called Henry Waldauer, a court reporter, at his home at about two o'clock Monday morning, June 16, and told Mr. Wal-

dauer in that telephone conversation that the defendant Ashcraft was "about to make a confession." We quote the following testimony on the cross-examination of Mr. Waldauer:

"Q. In other words, you don't undertake to say to this jury where Ashcraft was or what was happening to him from the time you got there at 2:00 o'clock Monday morning until you first saw him at 6:00 o'clock up in that room?

A. No, sir, I do not.

Q. You don't know a thing about that?

A. Not a thing.

Q. I think at 2 o'clock General Gerber told you over the phone he was about to make a confession and he wanted you to take it down?

A. Right." (R. 148.)

It is submitted that under the law in Tennessee, as well as in other jurisdictions, that it was the duty of the officer before they took this defendant Ashcraft into custody to have sworn out a warrant for his arrest charging him with the murder of his wife if they wanted to take him into custody at all. They admittedly did not do this. They simply took him out of circulation and held him illegally.

Be this as it may however, there can be no doubt in the minds of any lawyer or Court that at eleven o'clock Saturday night, June 14, 1941, when Becker and General Battle in the room in the county jail charged the defendant Ashcraft with having murdered his wife, it was their duty at that time to swear out a warrant so charging and promptly take him to a committing magistrate for a preliminary hearing. This they did not do and violated in not so doing his statutory and constitutional rights. The provisions of our code and the decisions of this Honorable Court on this subject are too well known to set them out and to discuss them here. It is only necessary to call this to the attention of the Court.

In the opinion of this Honorable Court in the McNabb case, Mr. Justice Frankfurter referred specifically to the section of our Code (Section 11555) and also referred to the case of Polk vs. State of Tennessee with approval and supporting authorities.

We charge that the swearing out of the warrant and the preliminary hearing, if it can be dignified as such, was a farce. We have already stated what occurred. The record shows beyond contradiction that this defendant by the committing Magistrate was not at any time asked if he desired to waive the examination of witnesses or a formal hearing. He was not asked by the committing magistrate if he desired the aid of counsel. He was not asked or informed that any statement he might make would be used against him in court at his trial.

All this took place in the room on the 5th floor of the county jail with no one present but the committing Magistrate and Ashcraft. The committing Magistrate had an office as aforesaid at 119 Madison where he held his court and the arraignment or preliminary hearing could have been held there with dignity and decorum. All of this occurred approximately 30 hours after this defendant Ashcraft had been openly and admittedly by the officers and General Battle charged with the murder of his wife.

We call the attention of the court to the case of

Cross v. State, 142 Tenn. 510.

In this case Mr. Justice McKinney in the opinion very ably set forth just what is required under our law in such cases. The provisions of the Code designated in the Cross case are carried in our 1932 Code under the sections set out above.

Mr. Justice McKinney in this case discusses very ably the question of the legality of confessions generally. In this connection we desire to call the attention of the court to the case of

Polk v. State—170 Tenn. 271.

We deem it unnecessary to quote from this case, but the court will readily see it is applicable upon reading it.

We have already asserted that the admissions or the so called confessions of the defendants Ashcraft and Ware were illegal and not admissible as evidence, but for the sake of argument we should admit that if they were or if the Court should so find that they were, it was error for the trial court over the objection and exception of counsel for the defendants Ashcraft and Ware to allow witness Becker and others to testify to all of the so called oral admissions of the defendants and then to bolster this testimony up by admitting a long typewritten so-called statement made by the defendants. This was error and highly prejudicial to the rights of these defendants.

This Honorable Court years ago discussed the legality of confessions of the character under discussion. The first outstanding case is that of

Brahm v. U. S., 169 US 532, 42 L. Ed. 568.

Then followed the very noted case of,

Ziang Sung Wan v. U. S. 266 US 1, 69 L. Ed. 131.

While these cases are full and complete on the subject this Honorable Court has gone much further and has very definitely placed its stamp of disapproval upon confessions secured as this one is alleged to have been extorted.

We cite the Court to the case of

Chambers et al v. Florida 309 US 227.

We deem it only necessary to cite this case to the Court without quoting from it at all, but we will make the observation that the defendants or the petitioners in the United States Supreme Court suffered no physical violence at the hands of the officers. They were only questioned for a

long period of time on the 4th floor of the jail in the presence of the Attorney General.

It will be observed that this Honorable Court branded the activities of the Attorney General in this case as reprehensible. His place was said to be at the Bar in the presence of the Criminal Court Judge as Prosecuting Attorney and not an extortioner of evidence.

The Court will observe that the next case was,

White v. State of Texas 310 US 530.

In this case the defendant White was convicted of rape and sentenced to death. The Supreme Court of the State of Texas affirmed the lower court. A petition for certiorari was filed in his behalf in the Supreme Court of the United States and it was first denied. A petition to rehear was then filed in his behalf and the authorities of the State of Texas evidently paid little attention to the petition to rehear. The petition to rehear was granted by this Honorable Court. It was then that the authorities of the State of Texas filed a petition to rehear and it is upon this petition the opinion of this Honorable Court is based.

We cite to the Court the case of,

Lomax v. State of Texas 313 US 544, 144 SW 555.

The opinion is a per curiam.

Then follows the case of,

Vernon v. State of Alabama 315 US 547, 200, So. 560.

We cite the Court to the case of,

Canty v. Alabama 309 US 628, 191 So 260.

The very latest opinion on this subject is the case of,

Benjamin McNabb et al v. US of A.

We do not deem it necessary to quote from the opinion of this Honorable Court in this very recent case with which

this Honorable Court is of course familiar; but it is decisive as we see it of the issues under consideration here.

The opinion of this Honorable Court in the McNabb case simply confirms the opinion of our own Court which was not followed by the Supreme Court of Tennessee in the instant case in the Polk case and in the Cross case.

There is no place in American jurisprudence or in a democratic society for the use of extorted confessions to convict persons charged with crime. The sweat box, the thumbscrew and the wooden boot to extort confessions from persons charged with crime have been long since outmoded.

Perfectly aware of the fact that the prosecuting officers and those in authority in the various states have gone far afield and beyond their constitutional prerogatives in securing confessions of persons charged with crime not only this Honorable Court has been called upon but did condemn the practice by its opinions, but the American Bar Association in a formal meeting assembled has done so.

The American Bar Association has condemned the practice of extorting confessions from persons in custody and passed a very strong resolution at its 56th Annual Meeting as is found on page 149 of the bound volumes of the report of the proceedings. We quote from this resolution as follows:

“(5) That lawless methods of law enforcement have a great tendency to promote crime, (6) That the extortion of confessions or admissions by depriving the prisoner of opportunity of sleep, depriving him of food or drink, or any of the so-called methods of third degree is abhorrent to all who value the dearly purchased liberties declared in our Constitution and is indefensible upon any grounds. (7) That all law enforcement officers and judges ought to be alert to protect arrested persons in their constitutional rights and ought never to take part in or to countenance any attempt by secret inquisitions or other lawless means to get confessions or admissions.”

We therefore have the American Bar Association and the Supreme Court of the State of Tennessee condemning this outrageous practice, and this Honorable Court in late and powerful opinions condemning such practices and saying in so many words that all courts and law officers so doing must be stopped and stamped out once and for all.

The facts of this case under consideration present this nefarious and illegal practice in its ugliest and most reprehensible form. It simply is not right to take any person or citizen suspected of crime into custody and mistreat him or hold him without warrant until he confesses. This case presents this reprehensible, illegal and oppressive practice in its most repugnant form. This is the crowning case. It presents the extremest limit to which this practice can be carried. We ask this Court to stamp it out and stop it now. It must be stopped in this democratic county.

We feel that under the authorities that we have cited the Court will with promptitude reverse this case.

Specification of Error No. 3.

THE COURT ERRED IN THIS CASE IN DELIVERING HIS CHARGE TO THE JURY IN THAT HE IN NO PLACE OR AT ANY TIME IN HIS CHARGE TO THE JURY PRESENTED THE THEORY OF THE DEFENDANT ASHCRAFT TO THE JURY. HE WHOLLY AND COMPLETELY IN HIS CHARGE IGNORED THE CONTENTION AND THEORY OF THE DEFENDANT ASHCRAFT THAT THE ALLEGED CONFESSION OR ADMISSIONS MADE BY HIM EITHER IN WRITING OR ORALLY MADE WERE MADE BY HIM THROUGH DURESS, FORCE AND THREATENED VIOLENCE, AND WERE NOT FREELY AND VOLUNTARILY MADE AND WHOLLY INCOMPETENT AS EVIDENCE AGAINST HIM IN THE CASE, OR THAT IF THE JURY FOUND THAT SAID STATEMENTS WERE NOT FREELY AND VOLUNTARILY MADE THE JURY COULD NOT CONSIDER THEM FOR ANY PURPOSE AGAINST HIM. HE SUBMITS THAT THE COURT THEREFORE WHOLLY

FAILED TO SUBMIT THE THEORY OF THIS DEFENDANT TO THE JURY AT ALL AND THAT THIS WAS AN ERROR.

May it please the Court: We submit that the defendant Ashcraft in this case has in reality never had a legal trial; that the proceedings had in the Criminal Court of Shelby County, Tennessee wherein he was convicted and sentenced to ninety-nine years in the Tennessee State Penitentiary were a legal nullity.

As aforesaid, both he and the defendant Ware stand convicted solely and alone upon their alleged confessions. The validity of their said confessions and admissions was the sole issue in the case. The case was tried out on that issue. The defendants contended that the so-called confessions and admissions were illegal as evidence and incompetent against them because they were not freely and voluntarily made and that they were taken in violation of their Constitutional rights—particularly the Due Process Clause of the 14th Amendment of the Constitution of the United States.

For the following reason it is submitted that the defendant Ashcraft has had actually no trial of his case:

When objection to the introduction of his so-called confession and admission was made in his behalf the trial court in overruling his objection had the following to say with respect to the same:

“ * * * In view of the testimony of the witnesses in this case, including Mr. Waldauer, including the various sheriff's officers who have testified, and of Mr. Ashcraft himself, this Court is not able to hold, as a matter of law, that reasonable minds might not differ on the question of whether or not that alleged confession was voluntarily obtained. And, therefore, as to the defendant Ashcraft, the motion will be overruled.”

“ * * * The Court is not able, as a matter of law, to say that the reasonable minds of twelve men might not differ as to the question of whether Ware's confes-

sion was voluntary, and thinks, therefore, that is a question of fact for the jury to pass on."

This Honorable Court will see that the trial court said that he could not say that the alleged confessions and admissions were not freely and voluntarily made and that the minds of reasonable men might differ on this issue. Yet when he came to charge the jury the trial court refused to submit to the jury trying the case the question as to whether or not the confessions were as a fact freely and voluntarily made. He had the following to say in his charge:

"It is the theory of the defendant Ashcraft, that he did not counsel, hire, incite, command or procure the defendant Ware to kill the deceased Zelma Ida Ashcraft and that he had nothing whatsoever to do with her death, and that he is not guilty of the offense charged against him in the indictment and that the State of Tennessee has failed to prove his guilt beyond a reasonable doubt. If you believe the theory of the defendant, Ashcraft, or if you believe the theory of the defendant Ware, or if upon all the proof, you have a reasonable doubt of the guilt of either of the defendants, it is your duty to acquit the defendant, Ashcraft."

This is all that he did say in his charge to the jury with respect to the theory of the defendant Ashcraft.

The trial court therefore, as we assert, has for all practical intents and purposes preemptorily instructed the jury to find the defendant Ashcraft guilty. This is what in effect his charge amounted to. The action of the trial court was duly excepted to and was assigned as an error in the Supreme Court of Tennessee in this case. It is submitted that therefore Ashcraft has had in effect no trial of his case. The jury under the charge of the court was left no discretion and was virtually told to accept the alleged confessions and admissions by Ashcraft as true. The jury

was not allowed to pass upon the question as to whether or not they were freely and voluntarily made..

It is submitted that the constitutional rights under the Constitution of the United States were invaded and set aside and for naught held by the trial court and that actually the defendant Ashcraft has had no trial of the real issues joined in his case.

The Supreme Court of Tennessee erred in not sustaining the assignments of error filed by and in behalf of both Ashcraft and Ware. A simple reading of the opinion of Mr. Justice Prewitt of the Supreme Court of Tennessee will show that he did not pass upon the issues and the assignments of error made by and in behalf of these defendants.

This Honorable Court touched upon and decided this very question in the case of *White v. State of Texas*.

This record reflects that the defendant Ashcraft from a mental standpoint, although he was an expert mechanic with his hands, is as ignorant a man as this twenty-year-old-negro boy, John Ware. However this may be, we submit that mentality is not a proper legal test of whether the constitutional rights of a person charged with crime have been invaded and disregarded. The constitutional rights of a mental genius can be just as ruthlessly disregarded and invaded as the constitutional rights of the most ignorant person.

Mr. Justice Frankfurter in his opinion in the case of *Anderson v. United States* says that the government conceded that the officers of the State of Tennessee violated the laws of the State of Tennessee and the Statute of the State of Tennessee in their treatment of the defendant in that case.

The action of the Tennessee officers in their treatment of the defendants before this Honorable Court in the *Anderson* case was far less reprehensible than the treatment

by the officers and Assistant Attorney General of these defendants in this case.

Your petitioner therefore respectfully pray that this their petition for writ of certiorari be issued and granted to the Supreme Court of the State of Tennessee to bring this cause before this Honorable Court and the record in the cause so that this Honorable Court might consider the issues raised in said petition and errors assigned, and that upon consideration by this Honorable Court their case reversed and their constitutional rights preserved.

This is the first application for writ of certiorari in these cases.

Respectfully submitted,

GROVER McCORMICK,
JAMES F. BICKERS,
Attorneys for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 391

E. E. ASHCRAFT AND JOHN WARE,

Petitioners,

vs.

STATE OF TENNESSEE.

SUPPLEMENTAL BRIEF FOR PETITIONERS.

GROVER N. MCCORMICK,

JAMES F. BICKERS,

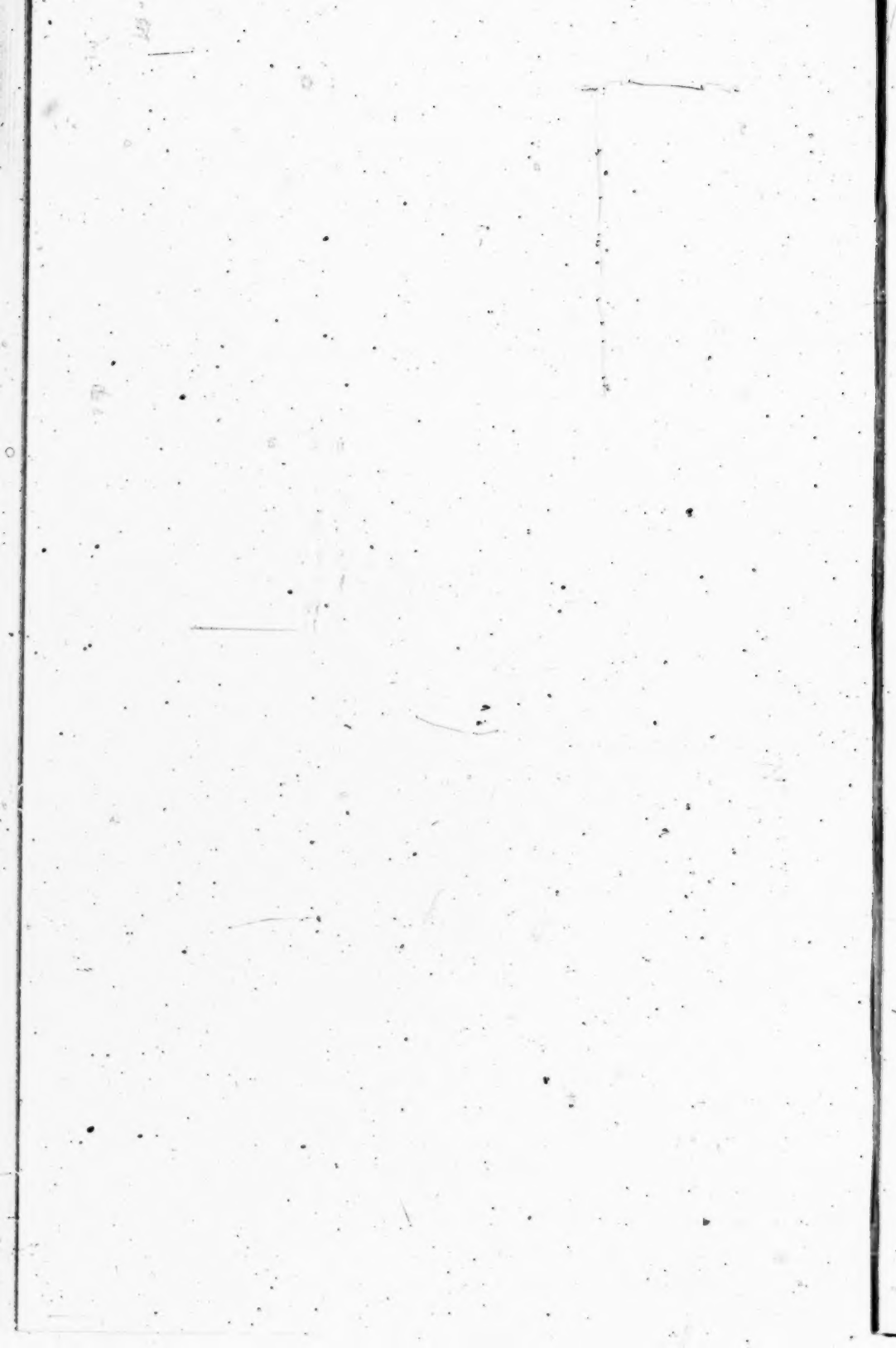
Attorneys for Defendants,

E. E. Ashcraft and John Ware.

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MAY IT PLEASE THE COURT:

We have just been furnished a printed copy of an additional brief filed in behalf of the respondent, State of Tennessee, in this case, and after consideration, we deem it appropriate in aid of the court to file a short reply thereto.

It is observed that no question as to the jurisdiction of this court to entertain this case is made by the State of Tennessee, nor could any jurisdictional question, as we assert, be presented.

The direct question for consideration by this honorable court is clearly presented in our petition for certiorari. An attack is made upon the alleged confessions of these defendants and their use as evidence against them and the manner in which they were allegedly secured. It must be noted that upon these alleged confessions alone, they stand

convicted, with a sentence of ninety-nine years decreed. It is asserted that the manner in which these alleged confessions were obtained and the treatment of these defendants generally by the officers of Shelby County, Tennessee, in collaboration with the District Attorney General and his assistant, Mr. Battle, constituted a violation of their constitutional rights both under the fifth amendment of the Constitution of the United States, and of the fourteenth amendment of the Constitution of the United States, and particularly the "due process" clause of said amendment, and also their rights under the constitution of the State of Tennessee.

It is observed that the additional brief filed in behalf of the respondent is in large measure a restatement and a reiteration of the arguments set forth in behalf of the state in the brief filed in opposition to the issuance of the writ of certiorari prayed for.

Now what do we find in these briefs by way of admissions?

On page 3 of the State's brief in opposition to the issuance of the writ of certiorari herein, we find the following:

"(a) Ashcraft. There are certain disputed facts in connection with the confession of petitioner Ashcraft, and others which are not disputed. Briefly, that any violence, threats or deprivation of food and water was had, is definitely disputed. That Ashcraft was kept in this room from about seven P. M. on Saturday, June 14th, until about eleven P. M. on Sunday, June 15th, or a period of some twenty-eight hours is not controverted in the record. Likewise, it is not controverted in the record the petitioner Ashcraft was not advised of his statutory right to counsel nor was he warned of his right against self incrimination."

We interpolate here to say that counsel is in error in reference to his twenty-eight hours. It was more than thirty-six

hours. Where counsel becomes confused is that for a half hour or so, Ashcraft was taken with the officers in an effort to locate the home of the defendant, Ware. This half hour was the only period of time in which Ashcraft was out of the room on the fifth floor of the county jail of Shelby County. He was then still in the custody and control of the officers, and the attorney general.

We further find on page 8 of the original brief filed in behalf of the state, the following:

"As above stated, it is undisputed that Ashcraft was held from seven P. M. until eleven P. M. the following night without a warrant having been sworn out for him, and that he was not notified of his statutory right to counsel, or his constitutional right against self incrimination."

Again on page 12 of this same brief, we find the following admission:

"There still remains the question as to the confinement of Ashcraft for approximately twenty-eight hours before any statement was obtained from him, during which time he was being continually questioned. Obviously, this is undisputed in the record. The respondent recognizes full well the force of the decisions of this Court, the most recent of which appears to be *Ward v. Texas*, 316 U. S. 547, wherein the earlier cases are collated."

Again we find on page 15 of the second brief filed in behalf of the State of Tennessee, the following:

"But there are certain undisputed facts in connection with the making of the confession in question. These are that Ashcraft was detained for approximately 36 hours before making such confession and that he was unattended by friends and without the advice of counsel. In passing, it might be noted that he makes no claim to have requested either with a subsequent denial thereof."

"It is perfectly true that this Court in a number of cases has stated that this Court will not hesitate to set aside confessions extorted from *ignorant* persons who have been subjected to persistent and protracted questioning or who have been *unlawfully* held *incommunicado* without advice of friends or counsel.

Ward v. Texas, supra, 555."

We respectfully submit, therefore, that the State of Tennessee, through its Learned Attorney General, concedes and admits that the constitutional rights of these defendants were violated by the officers of Shelby County, Tennessee, and the prosecuting attorney and his assistant, Mr. Battle, in their treatment of these defendants, in an effort to force these alleged confessions upon which they stand convicted here.

It is admitted, we submit, by the state, that the rights of these defendants, as reflected by the record in this case, fall completely under the protecting canopy of the opinions and decisions of this Honorable Court, and particularly in the cases of:

Anderson v. United States, 87 L. Ed. 589.

Chambers v. Florida, 309 U. S. 227, 84 L. Ed. 419.

McNabb v. United States, 87 U. S. 579.

White v. State of Texas, 310 U. S. 530.

Ziang Sun Wan v. United States, 266 U. S. 1, 69 L. Ed. 131.

Ward v. Texas, 316 U. S. 547.

Brown v. Miss., 297 U. S. 278, 80 L. Ed. 682.

To the admissions above quoted from the briefs filed in behalf of the State of Tennessee, there must be added the uncontroverted fact that Mr. Ashcraft, from seven o'clock Saturday evening, June 14th, until approximately 10 o'clock the following Monday morning, when his alleged confession was completed, was not allowed to sleep one wink. He was constantly quizzed in relays by the officers and was not al-

lowed to close his eyes in sleep. The record affirmatively shows this to be an absolute fact, sworn to by all of the witnesses for the state. See:

Rec. Page 55 Testimony Ezell.

Rec. Page 93 Testimony Becker.

Rec. Page 200 Testimony Ashcraft.

Rec. Page 294 Testimony Battle.

This, we submit, constituted a torture in itself beyond expression, and must not be countenanced. We are giving this honorable court a picture of these tortures reflected in the record by the testimony of the witnesses for the State.

The testimony of Mr. Ashcraft simply enlarges upon the tortures administered by the officers and the attorney general's office, and exhibits the extent to which the constitutional rights of these defendants were violated, and the reprehensibleness of the activities of the officers and the attorney general's office, in whose charge they were. Our own Supreme Court of Tennessee, we might say in passing, has unequivocally held that confessions secured by depriving a defendant of sleep, are wrongfully taken, illegal as evidence against a defendant, and in violation of the rights of a defendant under the Constitution of the United States.

It is so held in the late case of

Rounds v. The State 171 Tenn. page 512.

In this case the Tennessee Supreme Court had the following to say:

"Rounds said that he did not sleep more than two hours from Monday night until Friday morning. Although this statement may not be strictly accurate, we think it evident from the record that he was kept awake most of the time.

"To deprive a human of sleep for four days and nights is a form of torture not less severe than physical vio-

lence. See *Ziang Sun Wan v. United States*, 266 U. S. 1, 45 S. Ct., 1, 69 L. Ed., 131." . . .

"Whether the officers subjected this defendant to physical violence was a matter of controversy on the trial below and we need not go into that. That the officers did subject him to a course of treatment—keeping him awake as stated—that rendered him hysterical and necessitated the attendance of a physician is perfectly obvious."

"(3) A confession so obtained is not admissible. Resort to torture, IN ANY FORM, by officers of the law, is not to be countenanced." (CAPS OURS.)

"In *Brown v. Mississippi*, 297 U. S., 278, 56 S. Ct., 461, 80 L. Ed., 682, the Supreme Court of the United States has recently held that the use of a confession obtained by torture is a denial of due process under the Fourteenth Amendment to the Federal Constitution, and we think it immaterial whether the torture was administered by brute force or by some method more refined."

How the Supreme Court of Tennessee could affirm this Ashcraft-Ware case in the light of this opinion and other opinions of our own Supreme Court is beyond our ability to comprehend. It is our view that Judge Neil, who dissented, was eminently correct in his position.

We respectfully submit that this court would be justified in reversing the ruling of the Supreme Court of Tennessee in this (Ashcraft-Ware) case, upon the above authority, and upon the decisions of this honorable court handed down since its decision in the *Brown* case.

NOW MAY IT PLEASE THE COURT:

What is the argument set forth in the briefs for the State of Tennessee under which this court is asked to sustain the conviction of these defendants here? The crux of this argument is that the defendant, Ashcraft, is a man above the ordinary in intelligence,

This argument is reflected in the first brief filed by the State of Tennessee, wherein it is said:

"However, the respondent respectfully insists that the present case does not go to the extent of falling within the authority of those cases. In substantially each of them, the person from whom the confession was extorted seems to have been an ignorant, illiterate, impecunious member of the colored race, etc., etc." (Page 12.)

"In the present case however, the petitioner does not appear to be by any means illiterate or a person of weak mentality." (Page 13.)

We submit, may it please the court, that there is absolutely no testimony in the record upon which this argument can be based. There is not one line of evidence in the record to the effect that Ashcraft is a "man of above the average intelligence". On the other hand, the record affirmatively shows that he is a man unlearned, unlettered, illiterate, and of low intelligence mentally. The only evidence in the record on the subject is as follows: (Page 212 of the Rec.)

"By General Gerber:

Q. Mr. Ashcraft, let me say at the very outset that I am going to ask you very few questions, and if I ask you any questions that you don't understand, let me know and I'll repeat it.

A. All right.

Q. You were born in Gillette, Arkansas?

A. Yes, Sir.

Q. And you lived in Gillette how long?

A. I don't know exactly.

Q. About how long?

A. I left home there and went to work and made my own living from the time I was 11 years old.

Q. How old were you when you left Gillette, Arkansas?

A. Eleven years old.

Q. Where did you go from there?

A. I went down between Gillette and Stuttgart and worked on a farm.

Q. You stayed there how long?

A. I don't know; that's too far back."

This is all the evidence in the record on the subject.

Here, therefore, may it please the court, we have a man born in a little village of Gillette, in the southeastern part of Arkansas, leaving home when he was eleven years old, to make his own living. He could not have reached more than the third or fourth grade in school at best. This defendant, Ashcraft, is as illiterate a man as this colored man, defendant Ware. He (Ware) testified that he reached the fourth or fifth grade in school. (Rec. 264.)

Be it said to the credit of Ashcraft that he did make a good citizen of himself by working with his hands, and became an expert operator of a drag-line and steam shovel machine. This work was manual and not mental.

This record reflects that he had the confidence and the good will of every contractor that he ever came in contact with, government or otherwise. He is a fine gentleman, of exemplary habits and good character, so we see that the argument of the State to the effect that Ashcraft was a man of above the average in intelligence is not well founded.

Counsel for the State of Tennessee, seeking consolation any where he might find it, bases this argument upon certain excerpts found in some of the opinions of this honorable Court in the cases relied on here where reference is made to the ignorance of the defendants under discussion.

We submit that this argument should be by the court disregarded as of no effect under this record.

Treatment of Defendant John Ware.

Counsel for the State of Tennessee, in his briefs as we read them would leave the impression that the defendant, Ware, very quickly gave his confession.

We submit that the record does not support this contention.

What are the facts? At about 12 o'clock, on the night of June 15th, the officers, with Attorney General Battle, and Mr. Ashcraft, suddenly broke into the little room where John Ware, his wife, and a kinsman were sleeping in bed together. Flashlights were thrown in his eyes and he was ordered to get up and put on his clothes.

Obviously this scared this young negro man literally to death. He says that when he was being taken down the steps of his home to the car, that he was knocked in the head and to his knees and literally picked up and lifted into the automobile by the officers (R. 255). We submit that from this minute on, this young negro boy never had a mind of his own. He was wholly under the dominion of the officers and the attorney general of Shelby County, Tennessee, from fear of his life, and safety. He says that he was brought to the Shelby County jail shortly after 12 o'clock midnight, and after being talked to by the officers for a while, he was placed in a dry cell, a padded cell, a sweat box, a cell of solitary confinement, a cage, and threatened with mob violence. That he began to cry, and was hysterical from fear.

He testifies that he was asked if he did not know what happened to negroes who murdered a white woman in Mississippi, and that if he did not know what a mob was. He stated that he did know. He was then taken out of the padded cell or dungeon, as he called it in his testimony, and told the officers that he would confess to anything or say

what they wanted him to say if they would not turn him over to the mob (R. 258-259).

It is true that this testimony on the part of Ware is contradicted by the officers. Just here may we interpolate to say that from the reading of practically all the cases in the books on this subject, we find that in all of them the officers deny all acts of violence and oppression.

However, we submit that only one conclusion can be drawn from the testimony of Ware in respect to his being placed in this dungeon or cell of solitary confinement in the Criminal Courts Building of Shelby County, Tennessee, and that is that he was placed there. The officers knew or had ascertained from him that he had lived in the State of Mississippi. Defendant Ware, twenty years old, had never been in the jail where he was brought in that night at 12 o'clock. It is in the record that there is such a cell, or cage, set off by itself in the Criminal Courts Building. It is a secret cell. Defendant Ware never would have known that such a cell existed if he had not been actually placed in it. Therefore, we say that there can be no doubt that John Ware was confined in this cell or cage of solitary confinement, this dungeon, or that he was, in fact, threatened with mob violence. He testifies that he was in a hysterical condition in this cell and cried and pleaded with the officers not to turn him over to the mob.

He (Ware) was taken before the public stenographer, Mr. Waldauer, for the purpose of taking down in shorthand his confession. This happened at 2:15 A. M. on the morning of June 16th.

From the Rec. page 138—Testimony, Waldauer:

“Q. Will you tell us what time or about what time you started taking this statement of John Ware?

A. At 2.15 A. M.”

From approximately twelve o'clock midnight until 2:15 A. M. on the morning of Monday, June 16th, all of the pressure and power of the officers and the attorney general's office of Shelby County, Tennessee, had been brought to bear and was centered on getting a confession from the defendant, John Ware.

Defendant Ashcraft was in the custody of officers on the fifth floor of the Shelby County jail and being questioned by officers during this time.

Public Stenographer Waldauer began the taking of what is purported to be Ashcraft's statement at 7:10 o'clock Monday morning, June 16th, after Ware is alleged to have confessed.

"Q. At that time, state to the jury whether any statement was taken from the defendant Ashcraft?

A. Yes, sir, beginning at 7.10 A. M."

Rec. Page 143—Waldauer Testimony.

We submit that it is extremely significant in this record that General Gerber, the attorney general of Shelby County, who was at the county jail supervising all of these proceedings with reference to these alleged confessions, at 2:00 o'clock Monday morning, June 16th, called a court reporter, Henry Waldauer, at his home, and told him that he wanted him to come immediately to the jail, that defendant Ashcraft was about to make a confession and he wanted him to take it down and that when he (Waldauer) arrived at the county jail and was told by Attorney General Gerber that he was not to take any statement from Ashcraft, but that he was to take a statement from defendant John Ware (R. 148 Waldauer cross-examination).

The only conclusion to draw from this testimony is that no alleged confession satisfactory to the attorney general of Shelby County, Tennessee, had been obtained from de-

fendant Ashcraft until 7:10 o'clock Monday morning, June 16th, after they had finished with defendant John Ware, approximately five hours having elapsed. It is perfectly obvious from this record that these defendants were submitted to torture, duress, intimidation, coercion, abuse, and threats, at the hands of the officers of Shelby County, Tennessee, and the attorney general's office until alleged statements and admissions were secured from the defendants satisfactory to the attorney general of Shelby County, Tennessee, who was present.

Counsel for the State of Tennessee, in his briefs as we read them, advances the idea that we are relying principally for relief in this case upon the opinion of this court handed down in the case of *McNabb v. United States*, 318, U. S. 332. If he entertains this view, we submit to the court that he is entirely in error. We cite the *McNabb* case for its applicability to the facts set forth in the record in this case. It is perfectly apparent that it is applicable here. However, the other numerous cases decided by this court from *Chambers v. Florida* on down to the present moment that fit the facts of this case like a glove, and are, as we assert, controlling and without exception sustain the position advanced in behalf of these defendants upon this honorable court.

In addition to all of the other supporting authorities, that is to say, cases cited in our original petition for certiorari, and in this brief, we invoke and plant ourselves upon the holding of this court in the case of *Ward v. Tex.* 316 U. S. 547. In the last paragraph of the opinion of this honorable court in this case, we find the following:

"This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without

advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. Any one of these grounds would be sufficient cause for reversal. All of them are to be found in this case.

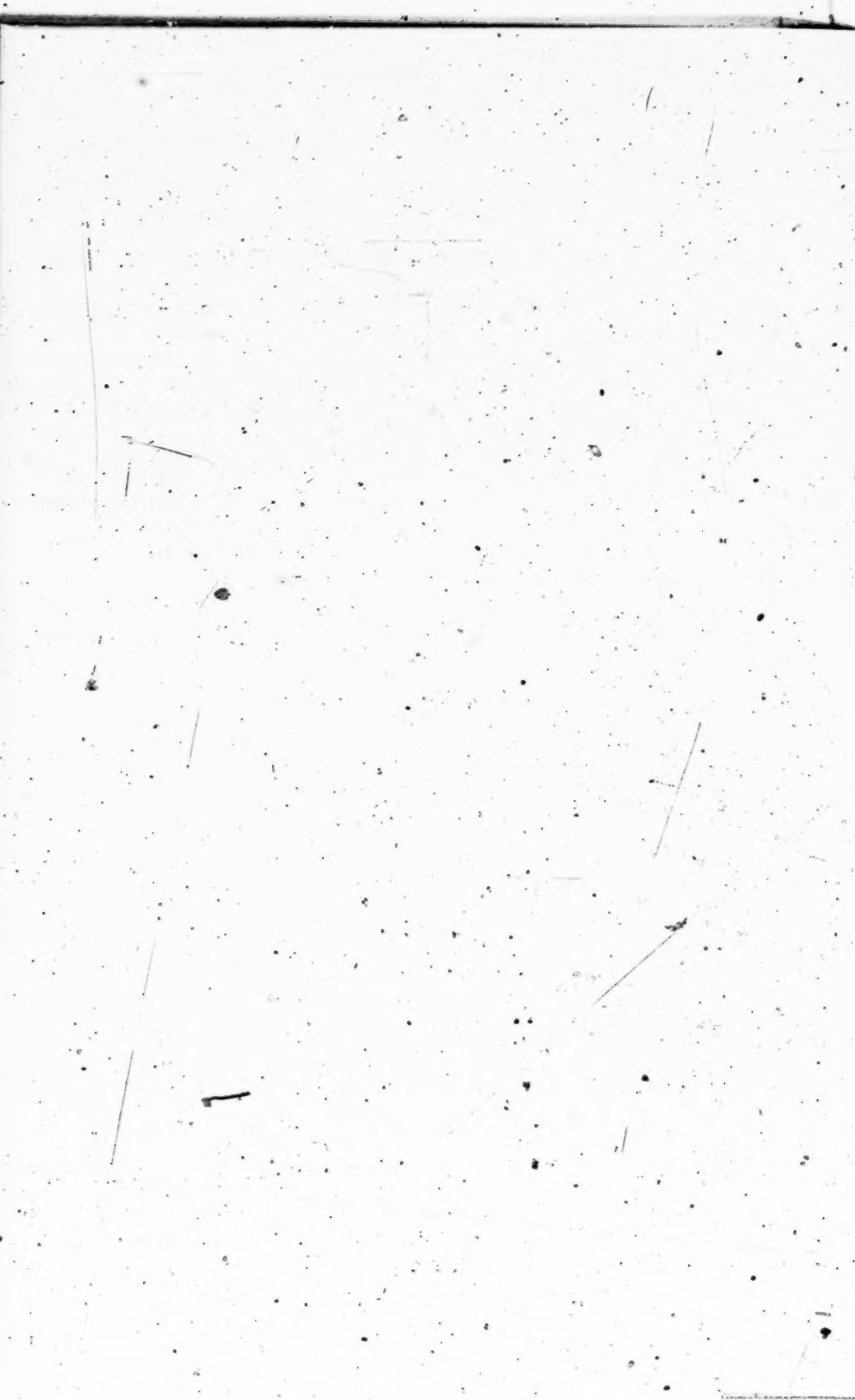
The use of a confession obtained under such circumstances is a denial of due process and the judgment of conviction must be reversed.

Reversed."

We submit that practically every ground for a reversal enumerated by this honorable court as above quoted exists in this record, and that the case should be by this honorable court reversed to the end that justice may be meted out to them.

Respectfully submitted,

GROVER N. McCORMICK,
JAMES F. BICKERS,
Attorneys for Defendants,
E. E. Ashcraft and John Ware.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 391

E. E. ASHCRAFT AND JOHN WARE,

Petitioners,

vs.

THE STATE OF TENNESSEE.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF TENNESSEE.**

BRIEF OPPOSING ISSUANCE OF WRIT.

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BRIEF OPPOSING ISSUANCE OF WRIT.

MAY IT PLEASE THE COURT:

The petition presents an effort on the part of the petitioners to review a judgment of the Supreme Court of Tennessee affirming a conviction of the Criminal Court of Shelby County, Tennessee, convicting petitioner Ware of murder, and petitioner Ashcraft, of being an accessory before the fact to such murder, and sentencing each of them to ninety-nine years' confinement in the State prison.

The only question relied upon consists of the contention on the part of petitioners that a confession of each, made

separately, was extorted from them by unlawful means, and that the introduction thereof against them constituted a deprivation of due process of law under the Fourteenth Amendment. So far as the contention is made that the introduction of such confessions deprived them of due process of law, the respondent concedes that the same presents a Federal question, under repeated decisions of this Court, and that the same was made seasonably in the State Courts. There is another contention on behalf of petitioner Ashcraft to the effect that the Trial Judge in submitting the case to the jury did not submit to that body the question as to whether or not the confession was extorted, thereby depriving him of due process of law, but the respondent neither concedes that the same presents a substantial Federal question, nor that the same was interposed in a timely manner, but on the contrary, insists that neither of such positions are well taken.

Since this Court has definitely held that where it be insisted that the introduction of a confession alleged to have been extorted by unlawful means is claimed, it will make its own examination of the record in such connection, and decline to be completely bound by the finding of the State Court upon this question (*Liscuba v. Calif.*, 314 U. S. 219), a somewhat detailed statement of facts becomes thereby necessitated. References to the pages of the transcript refer to the pages as they appear in the copy of the typewritten transcript furnished counsel for the respondent by counsel for the petitioners.

Statement of the Case.

Petitioner Ashcraft is a white man apparently in his forties, while petitioner Ware seems to be an illiterate negro, twenty-one years of age. Ware at the time of the homicide was employed upon a construction project upon which Ashcraft was likewise employed. The deceased was

the wife of petitioner Ashcraft. The record indicates that due to operations she had become extremely nervous, and that the situation became rather unbearable for Ashcraft. He had offered her a substantial property settlement if she would procure a divorce, but she refused.

In June, 1941, her dead body was found floating in a body of water near the city of Memphis. Ostensibly, she had left home early that morning in their automobile to visit her mother in Kentucky. The car was parked on a highway near the side of this pool of water. An examination of the body disclosed that she had been struck in the head with some type of blunt instrument. Part of the contents of the car had been disarranged so as to give the appearance of robbery.

Immediately the authorities of Shelby County began an investigation of the crime. They contacted the petitioner Ashcraft, and obtained from him a number of statements, of which no complaint is made. As the investigation progressed for approximately ten days, the authorities became increasingly convinced of the untruthfulness of these statements as being contradicted by the physical facts. Careful study of the situation increasingly convinced the authorities that there had been no robbery of the deceased.

Upon Saturday evening June 14th, the authorities in charge of the investigation sent an officer and took Ashcraft into custody, carrying him to the Shelby County jail, where he was taken to a room upon the fifth floor. Since the obtaining of the challenged confessions are separate charges, it will be better to treat them separately.

(a) Ashcraft. There are certain disputed facts in connection with the confession of petitioner Ashcraft, and others which are not disputed. Briefly, that any violence, threats or deprivation of food and water was had, is definitely disputed. That Ashcraft was kept in this room from

about seven P. M. on Saturday, June 14th, until about eleven P. M. on Sunday, June 15th, or a period of some twenty-eight hours is not controverted in the record. Likewise, it is not controverted in the record that petitioner Ashcraft was not advised of his statutory right to counsel nor was he warned of his right against self incrimination.

That Ashcraft was fed, is definitely testified to by the officers who had charge of the investigation Tr. p. 27; Tr. p. 39, p. 60. That he was permitted to go to the toilet and to have water when he so desired, is likewise definitely testified to by them Tr. p. 114; Tr. p. 393. Likewise, that he was permitted to smoke, and to have coffee when he desired it is also testified to by the officers Tr. p. 121.

All of the officers definitely testify that the threats and extortions which Ashcraft claims were made to him or toward him were not made Tr. p. 388; Tr. p. 389; Tr. p. 392. Likewise there is testimony that the light in this room which Ashcraft claims paralyzed his vision was an ordinary light over a desk, and it is also testified that there were no shades over the windows of this room so as to increase the intensity of such light Tr. p. 393.

Likewise, the record contains a statement by petitioner Ashcraft to his family physician that he had been treated all right Tr. p. 166.

As above stated, the questioning of Petitioner Ashcraft began about seven P. M., and about eleven P. M., the testimony is to the effect that after the officers had recounted to him his various statements which investigation had proven untrue, he made the statement to them that he realized that the circumstances all pointed toward him, and that he had no explanation for them Tr. p. 27; Tr. p. 88. Thereupon the officers accused him of the murder of the deceased, which he denied.

As above stated, he was retained in this room at the Shelby County Jail and questioned by various relays of

officers until about eleven P. M. upon Sunday night. According to the testimony of the officers, about eleven P. M. on Sunday night, while he was being questioned by Becker, he asked Becker if he might talk to Ezell, another of the officers who had participated in the investigation. Ezell was sent for, and according to his testimony, Ashcraft said that he wanted to tell the truth, and that a negro by the name of Tom Ware, or John Ware had killed his wife Tr. p. 60. Ashcraft's explanation for withholding this information from the officers was that he was afraid that the negro would burn his house down if he informed the officers of this crime. Becker was called in, and to him Ashcraft related the same story Tr. p. 60; Tr. p. 28. The record shows definitely that this was the first time that Ware's name had been mentioned in connection with the crime.

Ashcraft was then asked if he knew where Ware lived, and when he informed the officers that he could show them, he was taken in an automobile with the officers, and they proceeded to a negro settlement in Memphis where Ware lived. After an entry into the wrong house, occasioned no doubt by Ashcraft's unfamiliarity with that section of the city, Ware was arrested and taken to the jail, and he and Ashcraft were placed in the same room.

When Ashcraft was confronted with Ware, the latter was asked if he knew Ashcraft, and at once said that he did Tr. p. 61. Ware was thereupon asked as to the date of the last occasion upon which he had ridden to work with Ashcraft. Ashcraft undertook to prompt him as to the date, and thereupon, according to the officers, Ware turned to them and asked them if they wanted the truth, and when an affirmative answer was had from the investigating officers, their testimony is that he turned to Ashcraft and said in substance that he had told him "when this thing hap-

pened that if anything come of it, I wasn't going to take the whole blame on myself" Tr. p. 31; Tr. p. 67.

All of the officers testified that thereupon Ashcraft was taken to another room, and that Ware made to them the statement that he had been employed by Ashcraft to kill the deceased. The record indicates substantially that Ware had not been in the County jail for more than ten minutes before he made the statement in question. That this is substantially correct is corroborated by the testimony of Mr. Waldaner, a court reporter who was called in for the purpose of taking down and transcribing these confessions. His testimony is that he was notified by telephone about 1:40 A. M. to come to the jail. When proper allowances be made for the time requisite to find Ware and to give his story, it is obvious that Ware was not held for any appreciable length of time before his confession was made.

Ashcraft, under the testimony, seems to have been ignored temporarily from that point until approximately six A. M. The testimony indicates that he was held in what is known as the theft squad room of the jail, while all attention was centered upon the taking and transcribing of the confession of Ware. In the meantime, Dr. McQuiston, who under the record appears to be as near the family physician of Ashcraft as he could be said to have had, was called to the jail for the purpose of making a physical examination of Ashcraft, in anticipation of his claim that he had been mistreated.

Doctor McQuiston testifies that (1) Ware's statement as transcribed by the court reporter was read to him, and that he assented to its correctness, and signed it by his mark Tr. p. 61. He likewise testified that he examined Ware physically and found no evidence of any physical mistreatment Tr. p. 160. Dr. McQuiston testifies that it was perhaps five A. M. when he arrived at the jail Tr. p. 164. He likewise testifies that he saw Ashcraft and made a physical examina-

tion of him, and that in his presence Ashcraft made the statement that he had not been able to get along with the deceased, and that he had offered Ware a sum of money to make away with the deceased Tr. p. 161, 162. Doctor McQuiston testifies that at the time Ashcraft made no complaint about any mistreatment of any type, that he appeared normal, that his eyes were not blood-shot, and that he showed no signs of being unable to read Tr. p. 161.

After Ware's statement was shown to Ashcraft, the testimony on behalf of the State is that Ashcraft made a statement admitting his part in the homicide of the deceased, and that the statement was taken down by Waldauer and transcribed, but that when it was transcribed, Ashcraft declined to sign it saying that he wouldn't sign it until he had had an opportunity to consult a lawyer Tr. p. 183; Tr. p. 75.

In the meanwhile, two reputable business men of the city of Memphis, Mr. Castle and Mr. Pidgeon, had been called in to witness the confessions. They both testify that Ashcraft made the statements in question in their presence, and that when they were read to him he assented to their correctness, but declined to sign it Tr. p. 208; Tr. p. 230. Mr. Pidgeon testifies that Ashcraft looked very cool and collected and did not look tired Tr. p. 231. Mr. Castle testifies that Ashcraft looked in good physical condition to him, and that there was no evidence about his eyes or otherwise to show any tiredness Tr. p. 207.

Upon the trial Ashcraft stubbornly maintained that he had made no confession whatsoever, nor had any part in the homicide of his wife, and that the only reference which he had made to Ware was when the officers inquired of him as to who had been riding with him upon his way to work, and that when he mentioned Ware's name, the officers immediately took him to Ware's house to locate the latter.

(b) Ware. Ware admits making the confession introduced in evidence, but insists that before he made it he was placed

in a padded cell, and likewise was threatened by the officers with mob violence in case he declined to make a confession. The officers deny that handcuffs were placed upon Ware, or that he was threatened with a mob, or that any force or threats were used against him Tr. p. 37; Tr. p. 388, 396. Mr. Waldauer, the court reporter, who was a Notary Public and before whom Ware's written statement was sworn to, testifies that he explained to Ware at that time that he was not obliged to sign this statement unless he wanted to Tr. p. 177.

As above stated, it is undisputed that Ashcraft was held from seven P. M. until eleven P. M. the following night without a warrant having been sworn out for him, and that he was not notified of his statutory right to counsel, or his constitutional right against self incrimination.

BRIEF.

1.

Any asserted denial of due process must be tested by an appraisal of the totality of the facts in the given case.

Betts vs. Brady, 316 U. S. 455;

Lisenba vs. Calif., 314 U. S. 219.

2.

While the Court will make an independent appraisal of the facts in cases where it be alleged that the introduction of a confession deprived the accused of due process of law, there is a presumption of the correctness of the findings of the State Court, especially where the evidence be conflicting, unless such findings have substantially no support in the evidence. *Lisenba vs. California, supra.*

3.

McNabb v. U. S., 319 U. S. —, 63 Sup. Ct. 608; and *Anderson, et al. v. U. S.*, 319 U. S. —, 63 Sup. Ct. 599, do not formulate a procedural rule that is obligatory upon State Courts, but are limited to proceedings in courts of the United States.

4.

Especially is this true since in the present case the Supreme Court of Tennessee has held that the detention of petitioner Ashcraft was not unlawful under its statutes, and that they do not demand the immediate arraignment of one accused of crime.

5.

The construction of state statutes placed upon such statutes by the court of last resort of the State will be accepted by this Court.

Watson v. Buck, 313 U. S. 887;
Hartford Insurance Company v. Nelson, 291 U. S. 352;
Supreme Lodge v. Meyer, 265 U. S. 30.

6.

The State does not deprive one accused of crime of due process by treating the question of admissibility of confessions as a mixed question of law and fact to be determined by the court alone without submission of the same to the jury, where the court of last resort of such state reviews the findings of the trial court in such matters.

Buchalter v. N. Y., 319 U. S. —, 63 Sup. Ct., 1129.

7.

The rule in Tennessee has been for many years that the admissibility of confessions presents a question to be determined by the Court alone.

Boyd v. State, 21 Tenn. (2 Humph.), 39, 40.

Self v. State, 65 Tenn. (6 Bax.), 243, 253.

Beggarly v. State, 67 Tenn. (8 Bax.), 520.

Woodruff v. State, 164 Tenn. 530.

8.

Perhaps as many jurisdictions adhere to the common law rule that the admissibility of confessions is not a proper matter for submission to the jury as hold that they should be submitted to the jury.

See *Wigmore on Evidence*, 2nd Ed., Sec. 861 and notes thereto.

In such case it cannot be said that a state denies due process of law by adopting the rule sanctioned by such respectable authority.

Argument.

The Respondent respectfully insists that so far as the charges of physical violence and direct threats made by the Petitioner Ashcraft be concerned, it cannot be said by any means by this Court that the Supreme Court of Tennessee should have found in favor of his contention as to such physical mistreatment. In the first place, obviously the Petitioner Ashcraft is opposed by the numerical number of witnesses who testify. We frankly concede that the situation in this as well as the majority of cases is such that the accused when a confession be made is hardly in position to offer any great amount of corroborating testimony in his behalf, and were the case upon this feature dependent entirely upon such, a much more plausible contention might be made. But in the present case, the respondent respectfully insists that Ashcraft made no complaint to Mr. Waldauer, the Reporter, a completely disinterested witness, and one of varied experience. To Dr. McQuiston, who so far as the record goes is the only physician who has attended him since he has lived in Memphis, he made no complaint whatsoever, but upon the contrary, he made the affirmative statement that he had been treated fine. And likewise, in passing upon the question of credibility and the weight to be given to the statements of the Petitioner Ashcraft, the Respondent respectfully insists that the Trial Judge might well consider the fact that he was contradicted upon the question as to whether or not he made such a statement by both Mr. Castle and Mr. Pidgeon, neither of whom are interested in the slightest degree. It is perfectly true that their testimony hardly reflects upon any alleged mistreatment, but from the fact that he was contradicted by each of these disinterested witnesses upon so material a matter, the Trial Judge might well conclude that his credibility was below that of the parties testifying to the absence of such mistreatment.

It has been said by this Court in substance, that where the evidence be conflicting this Court will accept the determination of the triers of fact, unless it be so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process. *Lisenba v. Calif., supra*. The rule must be equally applicable where State procedure provides for a trial thereof by a court only, as distinguished from a finding by both court and jury.

With the emphatic denials of the officers contradicting the claim of the petitioner that such methods were used, with the petitioner himself contradicted by two witnesses, whose credibility is not assailed, and could not be, and with both the Trial Court and the Supreme Court of Tennessee finding in substance that no such so-called rough treatment was had, respondent respectfully insists that the judgment of the Supreme Court of Tennessee upon this phase of the admissibility of the confession is not so devoid of support in the evidence as to render it so fundamentally unfair as to make the constitutional guaranty of due process an empty shell.

There still remains the question as to the confinement of Ashcraft for approximately twenty-eight hours before any statement was obtained from him, during which time he was being continually questioned. Obviously, this is undisputed in the record. The respondent recognizes full well the force of the decisions of this Court, the most recent of which appears to be *Ward v. Texas*, 316 U. S. 547, wherein the earlier cases are collated.

However, the respondent respectfully insists that the present case does not go to the extent of falling within the authority of those cases. In substantially each of them, the person from whom the confession was extorted seems to have been an ignorant, illiterate, impecunious member of the colored race, but well recognizing that color will

have no effect upon the admissibility of such confessions, this Court has laid considerable stress upon the effects produced in the mind of a person confessing by a show of authority upon the part of those seeking to procure the confession. It stands to reason that the more ignorant and lowly of station the person be who is being subjected to such examination, the more terrified such person will become, to the point where fear dominates reason and will produce any type of story designed to relieve the mental pressure upon so weak an intellect.

In the present case however, the petitioner does not appear to be by any means illiterate or a person of weak mentality. He was of the dominant race in that community, and necessarily was hardly subject to the inferiority complex so often found in the minority race. That the Petitioner Ashcraft must be a person of considerable knowledge, can be inferred from the nature of his work, and certain it is that here was no ordinary member of the colored race to be terrified by an officer of the law, without any great degree of effort.

We recognize the fact that in a number of cases this Court has held that the continued questioning of persons accused of crime is sufficient to render such confession inadmissible. However, in each of these cases the questioning apparently has been of a more protracted nature than that found in the present case, and likewise, in each of such cases this Court has commented upon the unlawful nature of the actions of the officers in question. Regardless of the views which may be entertained by this Court as to the actions of the officers in question, the Supreme Court of Tennessee, whose duty it becomes to pass upon the conduct of such officers under the State statutes, expressly held in the present case that the detention of Petitioner Ashcraft was not unlawful under the Tennessee statutes, and that there was no unnecessary delay in arraigning him

before a committing officer. On the contrary, the Supreme Court of Tennessee in its opinion, affirmed the detention of the Petitioner Ashcraft as a temporary holding for examination purposes, and expressly held that such was not a committal to prison under the Tennessee statutes.

We respectfully insist that under the authorities quoted in the brief proper, the construction of the Tennessee statutes lies with the court of last resort of that state, and that such court, having passed upon the precise question in the present case, and having held that the detention of Petitioner Ashcraft was not unlawful under the Tennessee statutes, this Court is required to accept such decision, and to accord thereto that degree of respect which this Court gives to a decision of the court of last resort of the state construing the statutes of such state.

Likewise, it strikes the writer that in determining whether or not the will of the person in question has been so overpowered as to render such person incapable of asserting the slightest degree of will power, this Court will consider the condition prevalent at the time such confession be made, the ability of the party in question to think clearly and lucidly, their physical condition, and such other matters as are proper considerations at the hands of this court.

In the present case, so far as petitioner Ashcraft be concerned, it must be remembered that when the petitioner finally did make a statement to the officers, it was not a statement of guilt upon his part, but upon the contrary, it was a statement completely exonerating himself and placing the blame upon his co-petitioner. The statement first made by petitioner Ashcraft could have been introduced in evidence against him without the slightest danger of a conviction resulting to him from the introduction of such statement. Now we insist that such a statement is not the product of a mind over-awed by systematic and relentless questioning, as insisted by the petitioner, but upon the

contrary, it shows a complete recognition of the advantages to be attained by shifting the onus of the crime to the shoulders of another.

In the second place, the petitioner was examined by a physician who certainly could not be accused of unfriendliness toward him, and against whose qualifications and reputation no charge is leveled. This physician was unable to discover any physical injuries indicating mistreatment upon the body of the petitioner, and likewise his testimony is to the effect that petitioner appeared completely normal to him, and did not show any visible sign of the strain to which he claims that he had been subjected. Obviously complete domination of the will is seldom accomplished without its effect becoming visible from external sources.

But finally it would definitely appear that petitioner Ashcraft was completely in possession of his full faculties. All the witnesses testifying agree that when the typewritten confession was presented to him for his signature, he possessed sufficient shrewdness and ingenuity, as well as will power, to be able to decline to sign the same until he should have had an opportunity to consult with his lawyer about the propriety thereof. This one fact in itself certainly should be sufficient to negative the contention that the will power of the petitioner was exhausted, and that the confession was produced by the domination of the accusers.

Upon the contrary, the logical inference from the record is that Ashcraft realized, upon being confronted with his co-petitioner Ware, and hearing the remarks attributed to the latter, that Ware intended to make a clean breast of the entire matter, and that after he had this information and knowledge, he realized that no service to his own cause would be rendered by either a continuance of his own denials of any knowledge of his wife's death, or an insistence that Ware, and Ware alone, was responsible therefor.

So far as the insistence be made that the failure to caution the petitioner or to advise him of his right to counsel denied him due process, we would respectfully call to the attention of the Court the fact that in jurisdictions where no statutes have been enacted, and the matter has arisen, the overwhelming majority of such jurisdictions hold that a confession otherwise admissible is not invalid by the failure to caution the person confessing. The cases in question are collated in 16 C. J., p. 723-4 and supplemented in 22 C. J. S., pp. 1441-2, and will not be repeated here. We respectfully insist that where the overwhelming weight of authority, in the absence of a statute, be to the effect that a failure to warn or to advise as to the right of counsel will not render the confession inadmissible, due process is not thereby denied by such failure.

For the reasons above stated, we respectfully insist that the Supreme Court of Tennessee did not deny the petitioner due process in the admission of his alleged confession by the Trial Court.

Perhaps an explanation should be made of one matter upon which counsel for petitioners harp, and that is the testimony of Mr. Waldauer to the effect that the District Attorney General called him and informed him that Ashcraft was about to confess. It is substantially shown in the record that the District Attorney General was not present during the pre-confession conferences, and obviously such information as he had received must have been communicated to him by telephone, and in turn he called Waldauer. Under these circumstances, it is quite easy to see that there may have been a mistake in the message before it finally reached Waldauer at 1:40 A. M.

Perhaps at this point some note should be taken of the Tennessee statutes and cases relied on by petitioner Ashcraft. These statutes and cases relate to proceedings on the hearing before the magistrate. It is perfectly true that

in two cases, to-wit, the ones cited by petitioner, the Supreme Court of Tennessee has excluded confessions made upon a trial before a magistrate, because the defendant in such cases was not informed by the magistrate of his rights to counsel, and his right to make a statement. The statutes provide the duty of the magistrate in such cases, and where such duty has not been performed, the Supreme Court of Tennessee assiduously enforces the statutes. But these statutes and cases have no application to the present situation. Petitioner Ashcraft made no confession or statement in the nature thereof when arraigned before the magistrate, and the prosecution undertook to introduce no such statement. What it did undertake to introduce was a statement made earlier in the presence of numerous witnesses, taken down by the reporter with the transcription thereof completed, substantially an hour after his arraignment, and so the respondent respectfully insists that the State authorities relied upon by petitioner are not in point with reference to the facts of the particular case.

This then brings us to another line of authorities strenuously relied upon by the petitioner, to-wit, the recent case of *McNabb v. U. S.*, *supra*, and its companion case of *Anderson, et al. v. U. S.*, *supra*. A simple reading of the opinion in the *McNabb v. U. S.*, *supra*, should be sufficient to demonstrate that it was not intended to lay down the rule announced in that case for the State Courts. On the contrary, the opinion expressly bases its holding upon the supervisory authority of the Supreme Court over the administration of criminal justice in the Federal Courts. Many difficulties suggest themselves when the effort to apply this doctrine to State Courts be considered. It is entirely possible that a state, in the exercise of sound discretion in the administration of criminal law, might conclude that arraignment prior to commitment is not desirable. In such case, the doctrine in question either would

not apply, or this Court would be placed in the attitude of requiring that a State enact legislation, which in the exercise of sound discretion it had considered unsuited to the administration of criminal law.

In the present case, the Supreme Court of Tennessee expressly held after consideration of the Tennessee statutes dealing with the duty to arraign, that there was no requirement obviating unnecessary delay, nor is there to be found any provision of law requiring such immediate arraignment before a magistrate, and in the present case the Supreme Court of Tennessee held that there was no unnecessary delay in arraigning the petitioners before the committing officer. Despite an apparent conflict between the holding in the present case and that in *State, ex rel. v. National Surety Company*, 162 Tenn. 547, the conflict is more apparent than real, because, in *State, ex rel. v. National Surety Company, supra*, it was substantially assumed that the statutes required such immediate arraignment without a thorough consideration of such statutes. Be that as it may, the Supreme Court of Tennessee possesses that inherent privilege which characterizes all the better courts, to-wit, the right to reconsider its holding upon any principle of law, and to modify or change the same if in its opinion an erroneous result was reached by the prior holding.

Now, then, with no duty resting upon the officers under the laws of Tennessee as construed by its court of last resort in the present case, its latest holding upon the subject, it becomes obvious that there can be no application of the doctrine of *McNabb v. U. S., supra*, to the present case, without provoking that serious conflict between the judgment of each state expressing its idea of the proper policy to be followed in the administration of criminal justice, and the views of this Court as to the proper method to be followed in such administration in the Fed-

eral Courts where the situation may be radically at variance with that prevailing in the state in question.

For the reasons above stated, it is the respectful insistence of the respondent that so far as petitioner Ashcraft be concerned, the record discloses that he was completely in possession of his mental faculties at the time that he made the same, despite the protracted questioning to which he had been subjected, and that the confession emanated not as a result of any coercion of will produced by such protracted examination, but upon the contrary, from the realization that Ware had been apprehended, and had informed the authorities of Ashcraft's connection with the matter, and that the preponderance of the evidence in the transcript indicates that Ashcraft was completely normal, mentally and physically at the time of the making of such confession.

(2) Ware. The respondent respectfully insists that the facts in connection with the alleged confession of Ware are much more simple than those in connection with that of Ashcraft. In the first place, when Ashcraft informed the authorities that Ware had killed the deceased, they might then lawfully arrest Ware upon this charge, it being a felony, without the necessity of a warrant. *Code of Tennessee, Sec. 11536*. The arrest was made in all probability under the record, after midnight upon Monday morning. We say in all probability, because the testimony is not definite as to the exact time, but it is merely approximate. Having arrested Ware at this hour, they might lawfully lodge him in jail for safe keeping until the next morning when a magistrate might be found. *State, ex rel. v. National Surety Co., supra*. So therefore, beyond peradventure the arrest and detention of Ware were lawful, and it was so held by the Supreme Court in the present case.

The only other matters relied upon by Ware for the exclusion of the confession was his contention that he was

brutally mistreated by the officers after his arrest, and threatened. In the statement of facts, we have narrated the denials of the officers in this connection. Ware stands alone in his insistence of such threats and mistreatment, and he is directly contradicted by all of the investigating authorities who had occasion to come in contact with him. No doubt the trial Court who saw and heard the witnesses in person was able to form an accurate index and estimate as to their credibility, and the respondent respectfully insists that since the trial Court and the Supreme Court both found against these charges of mistreatment and threats, upon conflicting evidence, their findings cannot be said to be without substantial support in the evidence, and therefore they should be accepted by this Court under the doctrine of *Lisenbà v. Calif., supra.*

Under the testimony, there was obviously no protracted questioning of petitioner Ware. While as above stated, the statements with reference to the time of the occurrence was indefinite, and but the estimate of the various witnesses, it is obvious from the record that it was approximately 11:00 P. M. upon this Sunday night in question before the name of Ware was brought into the investigation. The record indicates that it was approximately 1:00 A. M. when Ware was brought to the County Jail Tr. p. 31; Tr. p. 55. Mr. Waldauer testifies definitely that he was called at 1:40 A. M. to come to the jail and to take this confession, and so it would seem therefore beyond question that Ware confessed within a very short time after he was brought to the County Jail. The witnesses who testify on behalf of the prosecution say that he had not been in the building for more than ten minutes before he made the statement to Ashcraft, indicating he intended to narrate his part in this crime. It certainly therefore is obvious that Ware was subjected to no continuous questioning, but upon the contrary

that his confession was made in less than an hour after he had reached the jail. Therefore, we respectfully insist that so far as Ware be concerned, there was certainly no deprivation of due process which caused him to make this confession, but on the contrary, the sight of Ashcraft in custody of the officers was too much for his illiterate limited mentality, and concluding therefrom that his part in the crime was known, he proceeded to make the confession introduced in the present case.

The transcript as furnished to the writer does not contain the motion for new trial interposed by Ashcraft, and although the writer tried the case in the Supreme Court of Tennessee, his memory fails as to whether or not petitioner Ashcraft there made the insistence that the failure of the trial Judge to submit to the trial jury the question as to whether or not the confession of Ashcraft was involuntary, deprived him of due process of law, under the Federal Constitution. Of course if such contention was not made in the State Court, it cannot be made in this Court for the first time. The respondent insists that the rule is so well settled to the effect that before this Court obtains jurisdiction on appeals from State Courts, there must be a claim of federal rights made in the State Court, and decided adversely to the claim of such right, that no citation of authority is necessary for so well known a principle.

But should such claim of Federal right have been made seasonably in the State Court, the respondent insists that such is not well taken. As shown in the brief proper, the rule in question has been followed in Tennessee for many years. It likewise has the sanction of perhaps the leading text upon evidence in this country. The notes to Wigmore on Evidence 2nd Ed. 861, *supra* reveal that the same rule is prevalent in a number of jurisdictions. The respondent respectfully insists that so long as the question of the

voluntariliness of a confession be submitted to a judicial tribunal with the right of review accorded by the highest court of the state, there is no constitutional requirement that it be submitted likewise as an issue of fact to be passed upon by the jury trying the case. The trial Judge presumably is familiar with the admissibility of confessions, and presumably likewise more intelligent than the average juror, and therefore is much more capable of rendering a correct decision upon the law and facts than would be the average juror.

After all, the respondent respectfully insists that where there be two well defined methods of testing the validity of a confession, the one involving a submission to the trial jury, and the other omitting such submission, a state in the exercise of the right to determine appropriate means for the enforcement of its criminal laws, and for the administration of criminal justice may adopt either of such methods without thereby denying an accused of due process of law.

Analogous is the holding of this Court in *Lisenba v. State, supra*, where it was held that the Fourteenth Amendment leaves the states free to construe and apply its own laws with reference to the evidence of an accomplice, and likewise the rule of relevance with reference to the commission of other crimes.

In *Buchalter v. N. Y., supra*, in discussing the effect of the Fourteenth Amendment, this Court said:

"It leaves the states free to enforce their criminal laws under such statutory provisions and common law doctrines as they deem appropriate, and does not permit a party to bring to the test of a decision in this Court for ruling made in the course of a trial in the State Court."

These authorities certainly should demonstrate that the Fourteenth Amendment leaves to a state the selection as to

the tribunal by which the issue of fact as to the voluntariness of a confession shall be determined, so long as such state provides for a judicial determination thereof. Likewise, under State practice, it was the duty of petitioner Ashcraft, if the Trial Court failed to accurately submit his theory and defense, to have submitted special requests, correctly setting forth his defensive theory.

Hqsiery. & Yarn Co. v. Napper, 124 Tenn. 155.

For the reasons stated, the respondent respectfully insists that the introduction of the confessions of the petitioners did not deprive them of due process of law, and that the petition for certiorari should be denied.

But before closing however, counsel for the respondent realizes that this Court is not concerned with his moral views, but he feels it his duty to state to the Court that should the conviction of petitioner Ashcraft be reversed by this Court, counsel's sense of justice would rebel at an affirmance of the judgment of the lower Court against Ware. Ware is a youthful negro, illiterate, and of rather low mentality, under the record. He was but a pliant tool in the hands of Ashcraft, and but for the suggestion and promise of reward upon the part of Ashcraft, Ware would not have even contemplated the commission of the homicide for which he stands convicted. Ashcraft was the guiding spirit in the entire matter, and Ware the nearly inanimate tool by which the actual homicide was accomplished, and although from a legal standpoint there may appear in the transcript no sound reason for the reversal of the judgment of the Supreme Court of Tennessee against Ware, yet if upon the whole record this Court shall be of the opinion that Ashcraft was denied due process of law by the introduction of his confession, then the respondent respectfully suggests that to accomplish complete justice, the judgment should

likewise be reversed as against Ware, in order that the greater criminal may not escape, while the lesser pay the penalty.

Respectfully submitted,

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I hereby certify that I have mailed a copy of this Brief to Messrs. James F. Bickers and Grover N. McCormick, Commerce Title Building, Memphis, Tennessee, Attorneys for Petitioners.

NAT TIPTON.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 391

E. E. ASHCRAFT AND JOHN WARE,

Petitioners,

vs.

STATE OF TENNESSEE.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF TENNESSEE.**

BRIEF FOR RESPONDENT.

✓ **NAT TIPTON,**

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✓ **ROY H. BEELER,**

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BRIEF FOR RESPONDENT.

MAY IT PLEASE THE COURT:

Since the references in the brief heretofore filed in opposition to the issuance of the writ are to the typewritten transcript and since the record has been printed, the respondent deems it appropriate to file this brief to correctly refer to the pages of the printed record.

The federal questions made by the petition are first, the contention that the admission of the confessions of each of the petitioners deprived them of due process of law and second, that the failure of the trial judge to submit to the

trial jury the question as to whether or not the confessions were voluntarily made likewise deprived them of due process. The first contention presents three subdivisions: (1) that the confessions were extorted by protracted questioning and by torture, (2) that they were produced by questioning prior to arraignment before a committing magistrate, and (3) that the petitioners were not advised as to their rights to counsel and against self-incrimination.

Statement of the Case.

Since this Court in cases where an invasion of due process clause be set up makes its own independent examination of the record and declines to be bound by the findings of the lower court, a somewhat detailed statement of the case is necessitated.

The petitioner Ashcraft is a mature man characterized by the Supreme Court of Tennessee as being above the average in intelligence (R. 355). Petitioner Ware is an illiterate negro 21 years of age who was employed upon a construction job on which Ashcraft was employed. The deceased was the wife of petitioner Ashcraft. The record indicates that due to a number of serious operations she had become extremely nervous and that marital union had become rather unbearable for Ashcraft. He had offered her a substantial property settlement if she would procure a divorce but she seems to have been unwilling to do this.

On the early morning of June 5, 1941, the deceased left their home in an automobile enroute to visit relatives in Kentucky. Sometime upon the same afternoon the attention of passers-by was directed to a parked car near a pool of water a short distance from Memphis. Officers were summoned and the body of the deceased was found floating in this pool of water. An examination of her person disclosed that she had been struck a number of times about the head with a blunt instrument, later shown to be rocks.

In spite of the fact that her wounds were of the type that would bleed profusely, no blood was found on her clothes nor were they disarranged to any appreciable degree. Part of the contents of the car had been disarranged so as to give the appearance of the commission of a robbery.

The authorities of the appropriate county immediately began an investigation of the crime. On that same afternoon they contacted the petitioner Ashcraft, took him to the morgue to identify the body of the deceased and then carried him to the county jail where he was kept until 2:00 A. M. in an effort to obtain as much information as possible relating to a solution of the crime. No complaint is made by petitioner Ashcraft at the action of the officers upon this first interview. In this first and subsequent interviews, Ashcraft made a number of statements with reference to the contention of the car driven by deceased, with reference to her having taken a certain drug and as to money which she was accustomed to carry upon her person.

As the investigation progressed the authorities in charge of it became increasingly convinced of the untruthfulness of these statements of the petitioner Ashcraft as being contradicted by the physical facts. Careful study of the situation increasingly convinced the authorities that there had been no robbery of the deceased.

Upon Saturday evening, June 14, the authorities in charge of the investigation sent an officer to bring Ashcraft to the jail for the purpose of further discussing with him these matters. Upon his arrival he was taken to a room upon the fifth floor and questioned by several officers.

Upon his arrival at the jail Ashcraft was first questioned by Mr. Becker and Mr. Battle, the latter an assistant district attorney general. These parties questioned him from about 7:00 P. M. until 3:00 A. M. the next morning. According to Becker after they had recounted to him his various

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statements which investigation had proven untrue, Ashcraft made the statement to them that he realized the circumstances all pointed toward him as being the perpetrator of the crime and that he could not explain these circumstances (R. 22, 73). Thereupon the officers accused him of the murder of the deceased which he denied (R. 73, 91). The testimony is that this occurred about 11:00 P. M.

About 3:00 A. M. Becker and Battle retired from the scene and Ashcraft was left in charge of the witness Ezell. Ezell talked to him about 7:00 A. M. when Becker and Battle returned. — They proceeded to interview him on Sunday until about noon, when Ezell returned and remained with Ashcraft until about 5:00 P. M. Becker took charge of him at that point and remained with him until about 11:00 P. M., when events began to happen with rapidity.

About 11:00 P. M. on Sunday night after Ashcraft had been in custody for approximately 28 hours, he expressed a desire to Becker, who was with him at that time, to speak to Ezell. Ezell was sent for and according to him, Ashcraft said that he wanted to tell the truth and that a negro by the name of Tom Ware or John Ware had killed his wife (R. 50). Ashcraft's explanation for withholding this information from the officers was that this was a mean negro and that he was afraid that the negro would burn his house if he informed the officers. Becker was called and in his presence Ashcraft repeated his story (R. 23, 50, 74, 166). The record definitely shows that this was the first time that Ware's name had been mentioned in connection with the case.

Ashcraft was then asked if he knew where Ware lived and when he informed them that he could show them the approximate location, he was taken in an automobile with several officers and they proceeded to a negro settlement where Ware lived. After an entry into the wrong house, Ware

was arrested and taken to the jail and he and Ashcraft were brought into each other's presence.

When Ware was confronted with Ashcraft, he was asked if he knew the latter and at once replied that he did (R. 51). He was then asked the last time upon which he had ridden to work with Ashcraft and according to the officers who were present, when Ashcraft undertook to prompt Ware as to the date, Ware turned to the officers and asked them if they wanted the truth and upon receiving an affirmative answer, he turned to Ashcraft and said in substance that he had "told Ashcraft when this thing happened if anything came of it he did not intend to take the entire blame" (R. 25, 51, 77, 168).

At this point Ashcraft seems to have been ignored until approximately 6:00 A. M. while the officers talked to Ware. It is rather obvious under the testimony that Ware very shortly after his arrest made a clean breast of his participation in the homicide. According to Becker, the officers reached the jail with Ware about 1:00 A. M. (R. 25, 42, 45). Ezell says that they reached there sometime after 12:00 (R. 173); Becker says that in his judgment Ware was not at the jail for more than five minutes before he began to talk (R. 27, 77). This is substantially corroborated by the testimony of Mr. Waldauer, the Court Reporter who was called to come to the jail and take down these confessions. Mr. Waldauer testifies that he received a telephone call at 1:40 A. M. to come to the jail and that he looked at his clock at the time of receiving this call.

The transcript of Ware's confession was completed at 5:40 A. M. and it was read back to him by Mr. Waldauer. Mr. Waldauer, a Court Reporter of experience and integrity, testifies that he informed Ware that he did not have to sign this confession unless he so chose (R. 140).

After Ware's confession had been completed and sworn to by him before Mr. Waldauer as a Notary Public, Ash-

craft was given a copy of the confession and according to those present, he admitted in substance that he had hired Ware to kill the deceased. After being given breakfast according to the state's testimony, he sat down and in response to questions made a statement which was taken down by Mr. Waldauer. After this statement was transcribed, Ashcraft requested to sign it but he declined, stating that he wanted to let his lawyer see it before he signed it (R. 33, 53, 64, 81, 145, 170). No effort was made to compel Ashcraft to sign this confession after his refusal so to do. However, in the meantime, two reputable business men of Memphis, Mr. Castle and Mr. Pidgeon had been called in to witness the confessions. Both of them testify that Ashcraft made the statements in question in their presence and that after they were transcribed and read back to him, he assented to their correctness but declined to sign them (R. 161, 177).

Ashcraft recounts a story of almost medieval torture. He testifies that the first thing that was said to him was that Becker accused him of killing the deceased (R. 198). He testifies that he was questioned for some hours but how long he could not tell because he says that the shades of the room in question were down and he could not tell whether it was day or night. It is shown, however, that contradictory to this claim, there were no shades upon the windows of the room in which he was situated (R. 42, 293). In fact, Ashcraft's co-petitioner Ware substantially contradicts him upon this phase of the matter because Ware, who was located in the same room, testifies that as soon as it got light enough he could see out the windows (R. 274). Ashcraft claims that he was placed with a strong light shining in his face and that this had its effect upon his nerves. Opposing this there is testimony in the record from Becker that the light in question was an ordinary 100 to 150-watt globe (R. 42, 90), and from Battle that it was just an ordinary light

from the ceiling (R. 293). Ashcraft testifies that he was refused food (R. 200), and was never out of the chair in which he was sitting until he was taken by the officers in search of Ware (R. 201), and that he was not allowed to go to the lavatory or given a drink of water although he asked for such (R. 202). The overwhelming mass of the testimony contradicts Ashcraft upon the question of food. Becker testifies that on Saturday night he was brought a sandwich and coffee about midnight and drank the coffee while refusing the sandwich (R. 22). Becker likewise testifies that on Sunday morning when he returned there was a tray with the remnants of a meal and a pot of coffee on it and likewise he saw evidence of Ashcraft having been fed at noon (R. 32, 74). Ezell testifies that on Sunday morning Ashcraft was given toast and coffee, that being all he said he wanted (R. 165). He testifies that on Sunday afternoon he ordered a plate lunch consisting of meat and vegetables and coffee (R. 176). Mr. Waldauer and Dr. McQuiston both testify that they saw breakfast served Ashcraft before he began to make the statement taken down by Mr. Waldauer (R. 129, 142). Becker testifies definitely that Ashcraft was permitted to leave his chair and that he was given water and taken to the lavatory (R. 93, 98). Ezell also testifies that he was given rest periods (R. 173). Becker testifies that Ashcraft was not denied the right to smoke (R. 34, 74, 98).

Ashcraft testifies that Battle asked him if he wanted a drink of liquor and that he refused (R. 201). He also testifies that Battle threatened to put a pitcher of water over his head and let it drip upon his skull (R. 201, 202). Battle emphatically denies both of these charges (R. 292, 293), and in addition, Ashcraft's contention is somewhat weakened by his express admission that upon a former trial of the case he did not make the statement that Battle had thus threatened him (R. 210, 239). Ashcraft gives as his excuse for not mentioning it at the former trial

that he was so exhausted from what he had been through that he could not think about it. This explanation is hardly tenable in view of the fact that Ashcraft admits that he had been in jail from June 14 until November and thus had ample time to recuperate (R. 239).

He also testifies that another officer by the name of Key came in the room where he was being held and rolling up his sleeves cursed him, threatened to manhandle him, slapped a cigarette out of his mouth and refused him a drink of water (R. 203). He testifies that Key took a picture of the deceased, put it upon his shoulder and then asked him if he could not feel the weight of deceased's head (R. 203, 204). Key most emphatically denies this statement of Ashcraft (R. 290-1).

Ashcraft's explanation as to the mention of Ware's name is that in the course of the questioning in interrogating him he was asked who had been riding with him in his car on the way to work and that he informed them that Ware and a white boy by the name of Tackett (R. 205). Both Becker and Ezell deny that Ashcraft ever mentioned Tackett's name to them (R. 288, 290).

In addition to the denials of the officers to whom this mistreatment is attributed, Ashcraft is contradicted by statements attributed to him, completely at variance with his claim in the present case. Dr. McQuiston, who had been the family physician of Ashcraft, was called to the jail about 5:00 A. M. upon this morning for the purpose of making a physical examination of both Ashcraft and Ware with the view to negating any insistence that they had been mistreated. Dr. McQuiston testifies that when he went to the room where Ashcraft was being detained, Ashcraft spoke to him and that he asked Ashcraft how he had been treated and Ashcraft replied that he had been treated all right (R. 132, 133). Waldauer also testifies that he took down the remarks of Dr. McQuiston and that

his record shows that Dr. McQuiston asked Ashcraft if anyone had mistreated him and he said he had been treated fine (R. 152). Pidgeon, who is completely disinterested, testifies that Ashcraft made the statement in his presence that he had been treated mighty fine (R. 177). In addition to these disinterested witnesses, both Becker and Ezell testify that Ashcraft made such a statement to Dr. McQuiston (R. 79, 169).

As negating Ashcraft's contention of such brutality, the testimony is to the effect that he did not look haggard or worn but appeared substantially as he did at the trial. For instance, Dr. McQuiston who made a physical examination of him, testified that he appeared normal, that he made no complaint to this physician about his eyes or any other part of his body and that his eyes were not bloodshot nor did he show any signs of not being able to read (R. 128). Dr. McQuiston testifies that Ashcraft did not look tired but looked about as he appeared to the witness at the present time (R. 132). Mr. Waldauer testifies that the eyes of Ashcraft were not bloodshot and that there was nothing the matter with him that he could see (R. 144, 145). Upon cross-examination Mr. Waldauer makes the statement that Ashcraft was much more composed at the time than was the witness and that he did not look sleepy or tired (R. 154, 155). Castle, who was present about 9:30, testifies that Ashcraft's physical condition looked very good and that there was no evidence about his eyes or otherwise to show any tiredness (R. 161). Pidgeon testifies that Ashcraft looked very cool and collected (R. 177).

Ashcraft testifies that the two officers, Becker and Ezell, told him that they were going to make up a statement on him and convict him on that (R. 210). Ezell emphatically denies this (R. 289).

Ashcraft completely denies making any statements whatsoever to the effect that he had hired Ware to kill the deceased although the fact that he did make such statements was testified to by Dr. McQuiston, Waldauer, Castle and Pidgeon in addition to the officers in the case.

Ware, while admitting the making of his confession, insists that it was extorted from him by threats of the officers. He testifies that as he left his home he was hit in the head and caused to stumble (R. 255). This is denied by three of the officers who were present, who say that no one struck him (Becker, R. 288; Ezell, R. 228; Jayroe, R. 295). He testifies that then he was placed in a sweat box or padded cell (R. 258). This is emphatically denied by both Ezell and Jayroe (R. 289, 296). He also testifies that he was threatened with mob violence if he did not confess but was told that he would not be hurt if he did confess (R. 259). Ezell and Jayroe both emphatically deny these statements (R. 289, 296). Mr. Waldauer, before whom Ware made oath to his confession, testifies positively that he informed Ware in his official capacity as Notary Public that he need not sign this confession if he did not want to do so (R. 140).

BRIEF.**I.**

A denial of due process, in criminal cases, is defined as the failure to observe that fundamental fairness, essential to the concept of justice.

Lisenba v. Cal., 304 U. S. 219.

II.

Whether or not due process has been denied varies according to the attendant circumstances.

Betts v. Brady, 316 U. S. 455.

III.

As to the introduction of confessions, the test of due process seems to be a free choice to admit, to deny or to refuse to answer, on the part of one making such confession.

Ward v. Texas, 316 U. S. 547;

Lisenba v. Cal., *supra*.

IV.

Though this Court makes its own independent findings where there be an averment of lack of due process, deference will be paid to the findings of the Supreme Court, upon disputed questions of fact, unless such findings be without substantial support in the evidence.

Lisenba v. Cal., *supra*.

V.

McNabb v. U.S., 318 U. S. 332, does not lay down a rule for the government of state courts nor is the decision based upon the due process clause. On the contrary, the Fourteenth Amendment leaves the states free to adopt

their own tests as to the admissibility of confessions, so long as due process be present.

Lisenba v. Cal., supra.

VI.

Due process is not denied by the failure to advise against self-incrimination nor as to the right of counsel.

Wilson v. U. S., 162 U. S. 613;

Powers v. U. S., 322 U. S. 303.

VII.

The construction of state statutes by the court of last resort of such state is accepted by this Court in dealing with constitutional questions.

Watson v. Buck, 313 U. S. 387;

Minnesota v. Probate Court, 309 U. S. 270;

Hartford Ins. Co. v. Nelson, 291 U. S. 352;

Supreme Lodge v. Meyer, 265 U. S. 30.

VIII.

The rule in Tennessee is that the admissibility of confessions presents a mixed question of law and fact to be determined by the trial judge as distinguished from its submission to the jury, with his action subject to review at the hands of the Supreme Court.

Boyd v. State, 21 Tenn. (2 Hum.) 39-40;

Self v. State, 65 Tenn. (6 Bax.) 243-253;

Beggardly v. State, 67 Tenn. (8 Bax.) 520;

Woodruff v. State, 164 Tenn. 530;

Polk v. State, 170 Tenn. 270;

Rounds v. State, 171 Tenn. 511.

IX.

The right of the trial judge to pass upon the admissibility of a confession, to the exclusion of the jury, is well recognized and declared to be the true rule.

Wigmore on Evidence, 3rd Ed., Secs. 487, 861.

Due process can hardly be said to be denied by the adoption of a rule having such reasonable sanction.

ARGUMENT.

Since this case comes to this Court upon the claim of a denial of due process, it may be well at the outset to quote the latest expression of this Court upon that subject. From *Betts v. Brady, supra*, we quote the following:

"Due process of law is secured against invasion by the federal Government by the Fifth Amendment, and is safeguarded against state action in identical words by the Fourteenth. The phrase formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule.

"Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial. In the application of such a concept, there is always the danger of falling into the habit of formulating the guarantee into a set of hard and fast rules, the application of which in a given case may be to ignore the qualifying factors therein disclosed."

P. 462.

The writer interprets the above excerpt to mean that this Court will in each particular case appraise the facts con-

nected with the claim of lack of due process and determine such claim in the light of the facts revealed by the record.

Of course, we recognize completely that line of cases relied upon by the petitioners, the last of which is *Ward v. Texas*, 316 U. S. 547, wherein the earlier cases are collated. The rule deducible from *Ward v. Texas*, *supra*, and its immediate predecessor *Lisenba v. Cal.*, *supra*, is that the true test of the denial of due process in the admission of a confession is whether or not the mind of the person confessing was free to admit, to deny or to refuse to answer. This rule might be stated in different terms. The test might be whether the confession be the product of the will of the person confessing or of the overpowering will of his accusers.

When the record in the present case is examined in the light of these principles, the respondent respectfully insists that it can not be said that the decision of the Supreme Court of Tennessee finding that there was no such overpowering will is erroneous. So far as the physical mistreatment of the petitioner Ashcraft be concerned, the preponderance of the evidence in the record seems to be to the effect that he was not mistreated and that his testimony in that respect should not have been accepted by the state courts. For instance, although he claims to have been most brutally threatened and tortured, two completely disinterested witnesses, one of them his family physician, attribute to him the statement just prior to the making of the confession in question that he had been well treated. Likewise, two other disinterested witnesses attribute similar statements to him just prior to the time at which he declined to sign such confession until he might consult with his lawyer. This is hardly consistent with his claim made at the trial. Likewise, it strikes the respondent that his testimony in this regard is similarly impeached by his admission that upon a former trial of the case he made no mention of

his claim that the Assistant District Attorney General threatened to put a pitcher of water above his head and let it drip onto his skull. His excuse for not having mentioned this, to-wit, that he was physically exhausted, is hardly tenable in view of the admitted fact that he had been in jail some four months since such occurrence and enjoyed that period of time for recuperative purposes. His claims of other mistreatment are particularly denied by the officers in question. In view of such denials which we have set out more particularly in the statement of facts, it would seem to the respondent that the judgment of the state court upon this disputed question of fact is not without substantial support in the evidence and that it should be accorded that degree of respect generally extended by this Court to the judgments of courts of last resort of a state. If the question of mistreatment of Ashcraft be reviewed *de novo* by this Court, it is the insistence of the respondent that the overwhelming preponderance of the evidence is to the effect that these physical cruelties testified to by him are contradicted.

But there are certain undisputed facts in connection with the making of the confession in question. These are that Ashcraft was detained for approximately 36 hours before making such confession and that he was unattended by friends and without the advice of counsel. In passing, it might be noted that he makes no claim to have requested either with a subsequent denial thereof.

It is perfectly true that this Court in a number of cases has stated that this Court will not hesitate to set aside confessions extorted from *ignorant* persons who have been subjected to persistent and protracted questioning or who have been *unlawfully* held *incommunicado* without advice of friends or counsel.

Ward v. Texas, supra, 555.

But the respondent respectfully insists that the present case does not fall within the scope of these decisions. In the first place, as found by the Supreme Court of Tennessee, the petitioner Ashcraft is a mature man and above the average in intelligence. Obviously, here is no ignorant and untutored person in whose mind the power of officers was clearly magnified.

Lisenba v. Cal., supra, 239-40.

Secondly, the Supreme Court of Tennessee in this particular case expressly held that the detention of Ashcraft was not unlawful under the state laws and that there was no unnecessary delay in arraigning him before a committing officer (R. 356, 357). Under the authorities cited in the brief proper, being a construction of the state statutes by the court of last resort of Tennessee, it should be accepted as the true meaning of the Tennessee statutes upon the subject.

The respondent respectfully insists that when the circumstances attendant on the making of the alleged confessions be taken into consideration, it definitely appears that the confessions in question were the product of the will of petitioner Ashcraft and not the result of the overpowering will of his accusers. In the first place, the statement made by Ashcraft at the conclusion of an extended period of questioning did not implicate him in the crime. On the contrary, this statement made to Becker and Ezell laid the entire blame at the door of Ware. This first statement could have been introduced upon the trial of Ashcraft without any substantial injury to the latter's legal rights because it completely exonerated him. Had the mind of Ashcraft been dominated by his accusers, it would appear that he would have made such statement to them as they desired. At least, at this point Ashcraft had enough self-possession and enough will power to see to it that the statement he

made was completely exculpatory as to him. This is rather inconsistent with a dominated will.

In the second place, the physical condition of Ashcraft would tend to indicate to a decided degree his ability to still retain his own will power and his freedom to talk or to decline to talk. As above stated, four disinterested witnesses who saw him at times ranging from about 5:30 A. M. until 9:30 A. M. upon this morning, testify that he appeared rather cool and collected to them. The integrity of these witnesses is not challenged in the record. None of them are connected with the police department or any law enforcing agency of the vicinity. Dr. McQuiston, who seems to be as near a family physician of Ashcraft as the latter has had, could not be said to be unfriendly toward him. The appearance of petitioner Ashcraft at the time of making the statements in question is hardly consonant with an overpowered mind.

But the strongest piece of evidence disclosing that the mind of the petitioner Ashcraft was not dominated is to be found in his refusal to sign the typed confession until he might submit it to his counsel. This act upon his part shows a mind clearly alive to the incriminating nature of this confession and manifestly discloses the will to refuse to answer, so to speak, upon the part of petitioner Ashcraft.

And finally, as evidencing the nature of the matter, it is undisputed that when petitioner Ashcraft declined to sign the written confession until he could obtain counsel and submit such to his counsel, no effort was made to force him to sign the same. This is hardly consonant with a dominating attitude on the part of the accusers and a submerged will on the part of Ashcraft.

The respondent respectfully insists that the confession of Ashcraft was produced by his realization that Ware had previously confessed and had bared Ashcraft's con-

nection with the homicide of the deceased and it was in the hopes of securing as favorable a position for himself as possible, as contrasted to that of Ware, that caused Ashcraft to make this confession.

So far as Ware be concerned, a holding by this Court that he was denied due process can proceed only from a finding at the hands of this Court that Ware was beaten or otherwise threatened by the arresting officers. Three of them emphatically deny all mistreatment toward Ware or any threats toward him. The record shows that these three officers who testified and Battle were the ones present (R. 75). Mr. Battle expressly denies that anyone struck either of the petitioners (R. 293). With the testimony in direct conflict upon this matter, with Ware standing alone in his assertions of threats and brutality toward him and with this contradicted by a greater number of witnesses, the respondent respectfully insists that the uncorroborated testimony of any defendant as to mistreatment should not be permitted to overturn the denials thereof after the court of last resort of a state has found the facts to the contrary. In this connection too, Mr. Waldauer, who is disinterested, is not challenged in the record and he expressly notified Ware that he need not sign the confession and swear to the same unless he was willing (R. 140).

When Ashcraft informed the officers that Ware had murdered the deceased, they might then lawfully arrest Ware without the necessity of a warrant upon such information, murder being a felony in Tennessee (Code of Tennessee, Sections 11536, 10767). The record indicates that the arrest of Ware was made between midnight and 1:00 A. M. upon this Monday morning. Having arrested Ware at this hour, they might lawfully lodge him in jail for safe-keeping until the next morning when a magistrate might be found. *State ex rel v. National Surety Co.*, 162 Tenn., 547.

It is rather obvious under the record that there was no extended or protracted questioning of Ware such as took place in the case of Ashcraft. The officers differ slightly as to the time at which Ware was brought to the jail. Becker places the time that they reached the jail as approximately 1:00 A. M. (R. 25, 42, 45). Ezell testifies that it was sometime after 12:00 midnight (R. 173). Mr. Waldauer, the Court Reporter, was called at 1:40 to take the confession of Ware (R. 59, 146). Mr. Waldauer testifies that he began taking the statement of Ware at 2:15 A. M. (R. 138). At the most, therefore, Ware could hardly have been held in custody for more than two hours before his statement was being taken down. The officers say that he was not in the jail for more than five minutes before Ware began to talk (R. 77). The respondent respectfully insists that but one conclusion is deducible from this record and that is that when Ware was faced with the sight of Ashcraft in custody, his illiterate mind instantaneously reached the conclusion that the participation of both in the crime had been discovered and in order that the entire blame thereof should not be placed at his door, he proceeded to inform the officers as to his connection with it. Hardly any other inference can be drawn from his opening remark to Ashcraft, testified to by the officers.

The respondent thinks but little need be said as to the contention of the petitioners that the failure of the officers to warn them of their rights against self-incrimination and of their right to the aid of counsel deprived them of due process. In *Wilson v. U. S.*, *supra*; and *Powers v. U. S.*, *supra*, this Court held that confessions made before a U. S. Commissioner in the course of a judicial hearing were not rendered inadmissible because the Commissioner failed to advise them of similar rights. The respondent insists that that which this Court has sanctioned does not deny due

process. The various authorities of the several states are collated in 16 C. J., 723-4, supplemented in 22 C. J. S., 1441-2.

The Tennessee cases relied upon by the petitioners are not in point. They deal with confessions made in the course of a judicial hearing before a magistrate. The statutes of Tennessee make it obligatory that the magistrate inform the party of his right to counsel and his right against self-incrimination. In the present case, the prosecution sought to introduce no statement made by either of the petitioners in the course of a judicial hearing. So far as this transcript goes, neither of the petitioners made the slightest incriminating statement at their arraignment before the magistrate. What the state did introduce consisted of statements made by each of them prior to such arraignment.

Perhaps the question most strenuously pressed upon this Court is the contention that the doctrine of *McNabb v. U. S.*, 318 U. S. 332, promulgating standards for prosecutions in the federal courts should be extended to prosecutions in the state courts and that no confession can be received in prosecutions in the state courts where made prior to arraignment if produced by questioning of suspects.

That the doctrine of *McNabb v. U. S.*, supra, is not applicable to prosecutions in state courts is made evident by the following excerpt from the opinion:

"In the view we take of the case, however, it becomes unnecessary to reach the Constitutional issue pressed upon us. For, while the power of this Court to undo convictions in state courts is limited to the enforcement of those 'fundamental principles of liberty and justice,' *Hebert v. Louisiana*, 272 U. S. 312, 316, which are secured by the Fourteenth Amendment, the scope of our reviewing power over convictions brought here from

the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied merely by observance of those minimal historic safeguards for securing trial by reason which are summarized as 'due process of law' and below which we reach what is really trial by force. Moreover, review by this Court of state action expressing its notion of what will best further its own security in the administration of criminal justice demands appropriate respect for the deliberative judgment of a state in so basic an exercise of its jurisdiction. Considerations of large policy in making the necessary accommodations in our federal system are wholly irrelevant to the formulation and application of proper standards for the enforcement of the federal criminal law in the federal courts.

"The principles governing the admissibility of evidence in federal criminal trials have not been restricted, therefore, to those derived solely from the Constitution. In the exercise of its supervisory authority over the administration of criminal justice in the federal courts, see *Nardone v. United States*, 308 U. S. 338, 341-42, this Court has, from the very beginning of its history, formulated rules of evidence to be applied in Federal criminal prosecutions."

Pp. 340-341.

The consequences that would flow from a holding of this kind are many and varied. It would impose upon the several states a rule of procedure that due to peculiar local conditions could prove at variance with the statutory and legislative policy of such state. To extend this rule to prosecutions in the state courts and to hold that due process in each case requires that no such confession be received

in evidence runs counter to two recent expressions of this Court.

From *Lisenba v. California*, supra, we quote as follows:

"The aim of the rule that a confession is inadmissible unless it was voluntarily made is to exclude false evidence. Tests are invoked to determine whether the inducement to speak was such that there is a fair risk the confession is false. These vary in the several States. This Court has formulated those which are to govern in trials in the federal courts. The "Fourteenth Amendment leaves California free to adopt, by statute or decision, and to enforce, such rule as she elects, whether it conform to that applied in the federal or in other state courts. But the adoption of the rule of her choice cannot foreclose inquiry as to whether, in a given case, the application of that rule works a deprivation of the prisoner's life or liberty without due process of law. The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false. The criteria for decision of that question may differ from those appertaining to the State's rule as to the admissibility of a confession."

P. 236.

"Does the questioning on May 2nd, in and of itself, or in the light of his earlier experience, render the use of the confessions a violation of due process? If we are so to hold, it must be upon the ground that such a practice, irrespective of the result upon the petitioner, so tainted his statements that, without considering other facts disclosed by the evidence, and without giving weight to accredited findings below that his statements were free and voluntary, as a matter of law, they were inadmissible in his trial. This would be to impose upon the state courts a stricter rule than we have enforced in federal trials. There is less reason for such a holding when we reflect that we are dealing

with the system of criminal administration of California, a quasi-sovereign; that if federal power is invoked to set aside what California regards as a fair trial, it must be plain that a federal right has been invaded."

P. 239.

If such rule be adopted the concept of due process would not vary with the particular facts of each case but on the contrary, would be governed by rigid rules. This is contrary to the quoted excerpt from the majority opinion in *Betts v. Brady*, supra.

The respondent insists that due consideration for the policy which a state may elect to adopt necessitates the denial of petitioners' contention. As has been stated in numerous opinions of this Court, the deliberate judgment of any state as to the best methods of enforcing its laws command the appropriate respect of this Court and it is only where such methods obviously collide with constitutional provisions that this Court will set aside the action of such states. We, therefore, respectfully insist that this Court should not hold that due process in every case requires the arraignment of one charged with crime in the state courts prior to any questioning of such person, at the peril of having any information derived from such questioning excluded by the courts.

The other contention made on behalf of petitioners is that the failure of the trial court to submit as a question of fact to the jury the voluntariness of their confessions denies them due process. As will be seen from an investigation of the case cited in the brief proper, Tennessee for years has followed the rule that the admissibility of confessions presents a mixed question of law and fact to be determined by the trial judge but that his action in the matter is subject to

review by the Supreme Court. By this process any person against whom a confession is sought to be introduced is accorded a judicial hearing before a competent tribunal. Due process does not require that in every instance each question of fact arising in the trial of cases shall be submitted to a jury. This Court has ruled that despite the Federal Constitution, a state may modify trial by jury or abolish it entirely. See *Palko v. Conn.*, 302 U. S. 319, 324, and cases there cited.

Now then, if a state may, consistent with due process, abolish trial, by jury, it certainly does not deny due process to permit the court as distinguished from the jury to pass upon and determine collateral questions of fact arising in the trial of criminal cases.

As stated in Wigmore on Evidence, 3rd Ed., Section 861, the better rule is that the admissibility of confessions presents a matter to be determined by the Court alone rather than by the court and jury. We respectfully insist that a rule approved by so eminent an author can not be said to deny due process.

Before closing, however, the state wishes to repeat its observation made in the petition opposing the issuance of the writ to the effect that should this Court be of the opinion that the judgment of the Supreme Court of Tennessee against petitioner Ashcraft denied him due process, with all fairness, the judgment against Ware should likewise be reversed irrespective of the merits of his contentions. Ware was but a pliant tool in the hands of Ashcraft, and, left to his own devices, would have never dreamed of committing the homicide for which he stands convicted and the State of Tennessee rebels at the thought of seeing the greater criminal escape while the lesser pays the penalty imposed by law.

In conclusion, the respondent earnestly insists that the judgment of the Supreme Court of Tennessee did not deny the petitioners due process and that such judgment should be affirmed.

Respectfully submitted,

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(9959)

SUPREME COURT OF THE UNITED STATES.

No. 391.—OCTOBER TERM, 1943.

E. E. Ashcraft and John Ware, Petitioners, <i>vs.</i> State of Tennessee.	} On Writ of Certiorari to the Supreme Court of the State of Tennessee.
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[May 1, 1944.]

Mr. Justice BLACK delivered the opinion of the Court.

About three o'clock on the morning of Thursday, June 5, 1941, Mrs. Zelma Ida Ashcraft got in her automobile at her home in Memphis, Tennessee, and set out on a trip to visit her mother's home in Kentucky. Late in the afternoon of the same day her car was observed a few miles out of Memphis, standing on the wrong side of a road which she would likely have taken on her journey. Just off the road, in a slough, her lifeless body was found. On her head were cut places inflicted by blows sufficient to have caused her death. Petitioner Ware, age 20, a Negro, was indicted in a state court and found guilty of her murder. Petitioner Ashcraft, age 45, a white man, husband of the deceased, charged with having hired Ware to commit the murder, was tried jointly with Ware and convicted as an accessory before the fact. Both were sentenced to ninety-nine years in the state penitentiary. The Supreme Court of Tennessee affirmed the convictions. —Tenn. —

In applying to us for certiorari, Ware and Ashcraft urged that alleged confessions were used at their trial which had been extorted from them by state law enforcement officers in violation of the Fourteenth Amendment, and that "solely and alone" on the basis of these confessions they had been convicted. Their contentions raised a federal question which the record showed to be substantial and we brought both cases here for review. Upon oral argument before this Court Tennessee's legal representatives conceded that the convictions could not be sustained without the confessions but defended their use upon the ground that they were not compelled but were "freely and voluntarily made."

The record discloses that neither the trial court nor the Tennessee Supreme Court actually held as a matter of fact that petitioners' confessions were "freely and voluntarily made." The trial court heard evidence on the issue out of the jury's hearing, but did not itself determine from that evidence that the confessions were voluntary. Instead it over-ruled Ashcraft's objection to the use of his alleged confession with the statement that, "This Court is not able to hold, as a matter of law, that reasonable minds might not differ on the question of whether or not that alleged confession was voluntarily obtained." And it likewise over-ruled Ware's objection to use of his alleged confession, stating that "the reasonable minds of twelve men might . . . differ as to . . . whether Ware's confession was voluntary, and . . . therefore, that is a question of fact for the jury to pass on."¹ Nor did the State Supreme Court review the evidence pertaining to the confessions and affirmatively hold them voluntary. In sustaining the petitioners' convictions, one Justice dissenting, it went no further than to point out that, "The trial judge . . . held . . . he could not say that the confessions were not voluntarily made and, therefore, permitted them to go to the jury", and to declare that it, likewise, was "unable to say that the confessions were not freely and voluntarily made."²

If, therefore, the question of the voluntariness of the two confessions was actually decided at all it was by the jury. And the jury was charged generally on the subject of the two confessions as follows:

¹ The legal test applied by the trial court to determine the admissibility of the two confessions was stated thus:

"The Court has come to the conclusion . . . that the law in Tennessee with reference to confession is simply this: it is largely a question of fact as to whether or not a confession is voluntary, and is made without hope of reward or fear of punishment. It only becomes a question of law for the Court to decide when, from the facts surrounding the taking of the alleged confessions or statements, the Court, as a matter of law, can hold that the State has failed to carry its burden, which it has of showing that the confessions were free and voluntarily, and that reasonable minds could not differ, and could come to but one conclusion that the confessions were involuntary and forced."

² Notwithstanding the apparent fact that neither the trial court nor the appellate court affirmatively held the confessions voluntary, the Tennessee Supreme Court, in its opinion, restated the rule it had announced in previous cases, that, "When confessions are offered as evidence, their competency becomes a preliminary question, to be determined by the Court. . . . [If] the judge allow the jury to determine the preliminary fact, it is error, for which the judgment will be reversed." See *Self v. State*, 65 Tenn. 244, 253.

"I further charge you that if verbal or written statements made by the defendants freely and voluntarily and without fear of punishment or hope of reward, have been proven to you in this case, you may take them into consideration with all of the other facts and circumstances in the case. . . . In statements made at the time of the arrest, you may take into consideration the condition of the minds of the prisoners owing to their arrest and whether they were influenced by motives of hope or fear, to make the statements. Such a statement is competent evidence against the defendant who makes it and is not competent evidence against the other defendant. . . . You cannot consider it for any purpose against the other defendant."

Concerning Ashcraft's alleged confession this general charge constituted the sole instruction to the jury.³ But with regard to Ware's alleged confession the jury further was instructed:

"It is his [Ware's] further theory that he was induced by the fear of violence at the hands of a mob and by fear of the officers of the law to confess his guilt of the crime charged against him, but that such confession was false and that he had nothing whatsoever to do with, and no knowledge of the alleged crime. If you believe the theory of the defendant, Ware, . . . it is your duty to acquit him."

Having submitted the two alleged confessions to the jury in this manner, the trial court instructed the jury that:

"What the proof may show you, if anything, that the defendants have said against themselves, the law presumes to be true, but anything the defendants have said in their own behalf, you are not obliged to believe. . . ."

This treatment of the confessions by the two State courts, the manner of the confessions' submission to the jury, and the emphasis upon the great weight to be given confessions make all the more important the kind of "independent examination" of petitioners' claims which, in any event, we are bound to make. *Lisenba v. California*, 314 U. S. 219, 237-238. Our duty to make that examination could not have been "foreclosed by the finding of a court, or the verdict of a jury, or both." *Id.* We proceed therefore to consider the evidence relating to the circumstances out of which the alleged confessions came:

³ On motion for new trial, Ashcraft's counsel urged error in that, "The court . . . in delivering his charge to the jury . . . in no place or at any time . . . presented the theory of the defendant Ashcraft to the jury. He wholly and completely in his charge ignored the theory of the defendant Ashcraft that the alleged confessions or admissions made by him . . . were not freely and voluntarily made. . . ."

First, as to Ashcraft. Ashcraft was born on an Arkansas farm. At the age of eleven he left the farm and became a farm hand working for others. Years later he gravitated into construction work, finally becoming a skilled dragline and steam shovel operator. Uncontradicted evidence in the record was that he had acquired for himself "an excellent reputation." In 1929 he married the deceased Zelma Ida Ashcraft. Childless, they accumulated, apparently through Ashcraft's earnings, a very modest amount of jointly held property including bank accounts and an equity in the home in which they lived. The Supreme Court of Tennessee found "nothing to show but what the home life of Ashcraft and the deceased was pleasant and happy." Several of Mrs. Ashcraft's friends who were guests at the Ashcraft home on the night before her tragic death testified that both husband and wife appeared to be in a happy frame of mind.

The officers first talked to Ashcraft about 6 P.M. on the day of his wife's murder as he was returning home from work. Informed by them of the tragedy, he was taken to an undertaking establishment to identify her body which previously had been identified only by a driver's license. From there he was taken to the county jail where he conferred with the officers until about 2 A.M. No clues of ultimate value came from this conference, though it did result in the officers' holding and interrogating the Ashcrafts' maid and several of her friends. During the following week the officers made extensive investigations in Ashcraft's neighborhood and elsewhere and further conferred with Ashcraft himself on several occasions, but none of these activities produced tangible evidence pointing to the identity of the murderer.

Then, early in the evening of Saturday, June 14, the officers came to Ashcraft's home and "took him into custody." In the words of the Tennessee Supreme Court,

"They took him to an office or room on the northwest corner of the fifth floor of the Shelby County jail. This office is equipped with all sorts of crime and detective devices such as a fingerprint outfit, cameras, high-powered lights, and such other devices as might be found in a homicide investigating office. . . . It appears that the officers placed Ashcraft at a table in this room on the fifth floor of the county jail with a light over his head and began to quiz him. They questioned him in relays until the following Monday morning, June 16, 1941, around nine-thirty or ten o'clock. It appears that Ashcraft from Saturday evening

at seven o'clock until Monday morning at approximately nine-thirty never left this homicide room on the fifth floor."⁴

Testimony of the officers shows that the reason they questioned Ashcraft "in relays" was that they became so tired they were compelled to rest. But from 7:00 Saturday evening until 9:30 Monday morning Ashcraft had no rest. One officer did say that he gave the suspect a single five minutes respite, but except for this five minutes the procedure consisted of one continuous stream of questions.

As to what happened in the fifth-floor jail room during this thirty-six hour secret examination the testimony follows the usual pattern and is in hopeless conflict.⁵ Ashcraft swears that the first thing said to him when he was taken into custody was, "Why in hell did you kill your wife?"; that during the course of the examination he was threatened and abused in various ways; and that as the hours passed his eyes became blinded by a powerful electric light, his body became weary, and the strain on his nerves became unbearable.⁶ The officers, on the other hand, swear that throughout the questioning they were kind and considerate. They say that they did not accuse Ashcraft of the murder until four hours after he was brought to the jail building, though they freely

⁴ From the testimony it appears that Ashcraft was taken from the jail about 11 o'clock Sunday night for a period of approximately an hour to help the officers hunt the place where Ware lived. On his return Ashcraft was, for a short time, kept in a jail room different from that in which he was kept the rest of the time.

⁵ "As the report avers 'The third degree is a secret and illegal practice.' Hence the difficulty of discovering the facts as to the extent and manner it is practiced" IV Reports of National Committee on Law Observance and Enforcement (Wickersham Commission), U. S. Government Printing Office, 1931, Lawlessness in Law Enforcement, p. 3. Station houses and jails are most frequently employed for third degree practices, "upstairs rooms or back rooms being sometimes picked out for their greater privacy." *Id.*, The Third Degree, p. 170. Cf. *Chambers v. Florida*, 309 U. S. 227, 238.

⁶ "Work" is the term used to signify any form of what is commonly called the third degree, and may consist in nothing more than a severe cross-examination: Perhaps in most cases it is no more than that, but the prisoner knows he is wholly at the mercy of his inquisitor and that the severe cross-examination may at any moment shift to a severe beating. . . . Powerful lights turned full on the prisoner's face, or switched on and off have been found effective. . . . The most commonly used method is persistent questioning, continuing hour after hour, sometimes by relays of officers. It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired." Report of Committee on Lawless Enforcement of Law made to the Section of Criminal Law and Criminology of the American Bar Association (1930) 1 American Journal of Police Science 575, 579-580, also quoted in IV Wickersham Report, *supra*, p. 47.

admit that from that time on their barrage of questions was constantly directed at him on the assumption that he was the murderer. Together with other persons whom they brought in on Monday morning to witness the culmination of the thirty-six hour ordeal the officers declare that at that time Ashcraft was "cool", "calm", "collected", "normal"; that his vision was unimpaired and his eyes not bloodshot; and that he showed no outward signs of being tired or sleepy.

As to whether Ashcraft actually confessed there is a similar conflict of testimony. Ashcraft maintains that although the officers incessantly attempted by various tactics of intimidation to entrap him into a confession, not once did he admit knowledge concerning or participation in the crime. And he specifically denies the officers' statements that he accused Ware of the crime, insisting that in response to their questions he merely gave them the name of Ware as one of several men who occasionally had ridden with him to work. The officers' version of what happened, however, is that about 11 P.M. on Sunday night, after twenty-eight hours' constant questioning, Ashcraft made a statement that Ware had overpowered him at his home and abducted the deceased, and was probably the killer. About midnight the officers found Ware and took him into custody, and, according to their testimony, Ware made a self-incriminating statement as of early Monday morning, and at 5:40 A.M. signed by mark a written confession in which appeared the statement that Ashcraft had hired him to commit the murder. This alleged confession of Ware was read to Ashcraft about six o'clock Monday morning, whereupon Ashcraft is said substantially to have admitted its truth in a detailed statement taken down by a reporter. About 9:30 Monday morning a transcript of Ashcraft's purported statement was read to him. The State's position is that he affirmed its truth but refused to sign the transcript, saying that he first wanted to consult his lawyer. As to this latter 9:30 episode the officers' testimony is reinforced by testimony of the several persons whom they brought in to witness the end of the examination.

In reaching our conclusion as to the validity of Ashcraft's confession we do not resolve any of the disputed questions of fact relating to the details of what transpired within the confession chamber of the jail or whether Ashcraft actually did confess.

7. The use in evidence of a defendant's coerced confession cannot be justified on the ground that the defendant has denied he ever gave the confession. *White v. Texas*, 310 U. S. 330, 531-532.

Such disputes, we may say, are an inescapable consequence of secret inquisitorial practices. And always evidence concerning the inner details of secret inquisitions⁸ is weighted against an accused, particularly where, as here, he is charged with a brutal crime, or where, as in many other cases, his supposed offense bears relation to an unpopular economic, political, or religious cause.

Our conclusion is that if Ashcraft made a confession it was not voluntary but compelled. We reach this conclusion from facts which are not in dispute at all. Ashcraft, a citizen of excellent reputation, was taken into custody by police officers. Ten days' examination of the Ashcrafts' maid, and of several others, in jail where they were held, had revealed nothing whatever against Ashcraft. Inquiries among his neighbors and business associates likewise had failed to unearth one single tangible clue pointing to his guilt. For thirty-six hours after Ashcraft's seizure during which period he was held incommunicado, without sleep or rest, relays of officers, experienced investigators, and highly trained

⁸ State and federal courts, textbook writers, legal commentators, and governmental commissions consistently have applied the name of "inquisition" to prolonged examination of suspects conducted as was the examination of Ashcraft. See, e.g., cases cited in IV Wickersham Report, *supra*, and also pp. 44, 47, 48, and *passim*; Pound (Cuthbert W.), *Inquisitorial Confessions*, 1 Cornell L. Q. 77; *Chambers v. Florida*, 309 U. S. 227, 237; *Bram v. United States*, 168 U. S. 532, 544; *Brown v. Walker*, 161 U. S. 591, 596; *Counselman v. Hitchcock*, 142 U. S. 547, 573; cf. *Cooper v. State*, 86 Ala. 610, 611. In a case where no physical violence was inflicted or threatened, the Supreme Court of Virginia expressly approved the statement of the trial judge that the manner and methods used in obtaining the confession read "like a chapter from the history of the inquisition of the Middle Ages." *Enoch v. Commonwealth*, 141 Va. 411, 423; and see *Cross v. State*, 142 Tenn. 510, 514. The analogy, of course, was in the fact that old inquisition practices included questioning suspects in secret places, away from friends and counsel, with notaries waiting to take down "confessions", and with arrangements to have the suspect later affirm the truth of his confession in the presence of witnesses who took no part in the inquisition. See *Encyclopedia Britannica*, Fourteenth Ed., "Inquisition"; Prescott, *Ferdinand and Isabella*, Sixth Ed., Part First, Chap. VII, *The Inquisition*; VIII Wigmore on Evidence, Third Ed., p. 307. "In the more serious offenses the party suspected is arrested, he is placed on his inquisition before the chief of police, and a statement is obtained. . . . Where the office of the district attorney is in political harmony with the police system, the district attorney is generally invited to be present as an inquisitor." 2 Wharton on Criminal Evidence, Eleventh Ed., pp. 1021-1022; and see Notes 5 and 6, *supra*.

An admirable summary of the generally expressed judicial attitude toward these practices is set forth in the Report of The Committee on Lawless Enforcement of Law, 1 Amer. Journ. of Police Science, *supra*, p. 587: "Holding incommunicado is objectionable because arbitrary—at the mere will and unregulated pleasure of a police officer. . . . The use of the third degree is obnoxious because it is secret; because the prisoner is wholly unrepresented; because there is present no neutral, impartial authority to determine questions between the police and the prisoner; because there is no limit to the range of the inquisition, nor to the pressure that may be put upon the prisoner."

lawyers questioned him without respite. From the beginning of the questioning at 7 o'clock on Saturday evening until 6 o'clock on Monday morning Ashcraft denied that he had anything to do with the murder of his wife. And at a hearing before a magistrate about 8:30 Monday morning Ashcraft pleaded not guilty to the charge of murder which the officers had sought to make him confess during the previous thirty-six hours.

We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear.⁹ It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in relays to keep a defendant witness under continuous cross examination for thirty-six hours without rest or sleep in an effort to extract a "voluntary" confession. Nor can we, consistently with Constitutional due process of law, hold voluntary a confession where prosecutors do the same thing away from the restraining influences of a public trial in an open court room.¹⁰

The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means

⁹ *Bram v. United States*, 168 U. S. 532, 556, 562-563; see also *Wan v. United States*, 266 U. S. 1, 14-15; *Burdeau v. McDowell*, 256 U. S. 465, 475; *Counsellman v. Hitchcock*, 142 U. S. 547, 573-574; 3 *Elliot's Debates*, pp. 445-449, 452; cf. *Chambers v. Florida*, 309 U. S. 227. The question in the *Bram* case was whether *Bram* had been compelled or coerced by a police officer to make a self-incriminatory statement, contrary to the Fifth Amendment; and the question here is whether Ashcraft similarly was coerced to make such a statement, contrary to the Fourteenth Amendment. *Lisenba v. California*, 314 U. S. 219, 236-238. Taken together, the *Bram* and *Lisenba* cases hold that a coerced or compelled confession cannot be used to convict a defendant in any state or federal court. And the decision in the *Bram* case makes it clear that the admitted circumstances under which Ashcraft is alleged to have confessed preclude a holding that he acted voluntarily.

¹⁰ Compare the following allegation contained in Ashcraft's motion for new trial: "The Sheriff's deputies . . . set themselves up as a quasi judicial tribunal and tried . . . and convicted him there and in so doing rendered a trial . . . before the trial court . . . and the jury of peers . . . a mere formality," with *Lisenba v. California*, *supra*, p. 237. "The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions . . ." *Cooley's Constitutional Limitations*, Sixth Ed. (1890) p. 379; see also *Kedington v. State*, 19 *Ariz.* 457, 459. "The aid of counsel in preparation would be farcical if the case could be foreclosed by a preliminary inquisition which would squeeze out conviction or prejudice by means unconstitutional if used at the trial." *Wood v. United States*, 128 F. 2d 265, 271. See also *Chambers v. Florida*, *supra*, p. 237, Note 10.

of a coerced confession.¹¹ There have been, and are now, certain foreign nations with governments dedicated to an opposite policy: governments which convict individuals with testimony obtained by police organizations possessed of an unrestrained power to seize persons suspected of crimes against the state, hold them in secret custody, and wring from them confessions by physical or mental torture. So long as the Constitution remains the basic law of our Republic, America will not have that kind of government.

Second, as to Ware. Ashcraft and Ware were jointly tried, and were convicted on the theory that Ashcraft hired Ware to perform the murder. Ware's conviction was sustained by the Tennessee Supreme Court on the assumption that Ashcraft's confession was properly admitted and his conviction valid. Whether it would have been sustained had the court reached the conclusion we have reached as to Ashcraft we cannot know. Doubt as to what the State court would have done under the changed circumstances brought about by our reversal of its decision as to Ashcraft is emphasized by the position of the State's representatives in this Court. They have asked that if we reverse Ashcraft's conviction we also reverse Ware's.

In disposing of cases before us it is our responsibility to make such disposition as justice may require. "And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered." *Patterson v. Alabama*, 294 U. S. 600, 607; *State Tax-Commission v. Van Cott*, 306 U. S. 511, 515-516. Application of this guiding principle to the case at hand requires that we send Ware's case back to the Tennessee Supreme Court. Should that Court in passing on Ware's conviction in the light of our ruling as to Ashcraft adopt the State Attorney General's view and reverse the conviction there then would be no occasion for our passing on the federal question here raised by Ware. Under these circumstances we vacate the judgment of the Tennessee Supreme Court affirming Ware's conviction, and remand his case to that Court for further proceedings.

The judgment affirming Ashcraft's conviction is reversed and the cause is remanded to the Supreme Court of Tennessee for proceedings not inconsistent with this opinion.

It is so ordered.

¹¹ *Chambers v. Florida*, 309 U. S. 227; *Canty v. Alabama*, 309 U. S. 629; *White v. Texas*, 310 U. S. 530; *Lomax v. Texas*, 313 U. S. 544; *Vernon v. Alabama*, 313 U. S. 547; *Eisenba v. California*, 314 U. S. 219, 236-238; *Ward v. Texas*, 316 U. S. 547, 555; and see *Bram v. United States*, 168 U. S. 532.

SUPREME COURT OF THE UNITED STATES.

No. 391.—OCTOBER TERM, 1943.

E. E. Ashcraft and John Ware,

Petitioners,

vs.

State of Tennessee.

On Writ of Certiorari to the
Supreme Court of the State
of Tennessee.

[May 1, 1944.]

Mr. Justice JACKSON, dissenting.

A sovereign state is now before us, summoned on the charge that it has obtained convictions by methods so unfair that a federal court must set aside what the state courts have done. Heretofore the state has had the benefit of a presumption of regularity and legality. A confession made by one in custody heretofore has been admissible in evidence unless it was proved and found that it was obtained by pressures so strong that it was *in fact* involuntarily made, that the individual will of the particular confessor had been overcome by torture, mob violence, fraud, trickery, threats, or promises. Even where there was excess and abuse of power on the part of officers, the State still was entitled to use the confession if upon examination of the whole evidence it was found to negate the view that the accused had "so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer." *Lisenba v. California*, 314 U. S. 219, 241.

In determining these issues of fact, respect for the sovereign character of the several states always has constrained this Court to give great weight to findings of fact of state courts. While we have sometimes gone back of state court determinations to make sure whether the guaranties of the Fourteenth Amendment have or have not been violated, in close cases the decisions of state courts have often been sufficient to tip the scales in favor of affirmance. *Lisenba v. California*, *supra*, 238, 239; *Buchalter v. New York*, 319 U. S. 427, 431; cf. *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 294.

As we read the present decision the Court in effect declines to apply these well-established principles. Instead, it: (1) substitutes for determination on conflicting evidence the question whether this confession was actually produced by coercion, a presumption that it was, on a new doctrine that examination in custody of this duration is "inherently coercive"; (2) it makes that presumption irrebuttable—i.e., a rule of law—because, while it goes back of the State decisions to find certain facts, it refuses to resolve conflicts in evidence to determine whether other of the State's proof is sufficient to overcome such presumption; and, in so doing, (3) it sets aside the findings by the courts of Tennessee that on all the facts this confession did not result from coercion, either giving those findings no weight or regarding them as immaterial.

We must bear in mind that this case does not come here from a lower federal court over whose conduct we may assert a general supervisory power. If it did, we should be at liberty to apply rules as to the admissibility of confessions, based on our own conception of permissible procedure, and in which we may embody restrictions even greater than those imposed upon the states by the Fourteenth Amendment. See *Bram v. United States*, 168 U. S. 532; *Ziang Sung Wan v. United States*, 266 U. S. 1; *McNabb v. United States*, 318 U. S. 332, 341; *United States v. Mitchell*, Nos. 514, 515, this Term, decided April 24, 1944. But we have no such supervisory power over state courts. We may not lay down rules of evidence for them nor revise their decisions merely because we feel more confidence in our own wisdom and rectitude. We have no power to discipline the police or law-enforcement officers of the State of Tennessee nor to reverse its convictions in retribution for conduct which we may personally disapprove.

The burden of protecting society from most crimes against persons and property falls upon the state. Different states have different crime problems and some freedom to vary procedures according to their own ideas. Here, a state was forced by an unwitnessed and baffling murder to vindicate its law and protect its society. To nullify its conviction in this particular case upon a consideration of all the facts would be a delicate exercise of federal judicial power. But to go beyond this, as the Court does today, and divine in the due process clause of the Fourteenth Amendment an exclusion of confessions on an irrebuttable pre-

sumption that custody and examination are "inherently coercive" if of some unspecified duration within thirty-six hours, requires us to make more than a passing expression of our doubts and disagreements.

I.

The claim of a suspect to immunity from questioning creates one of the most vexing problems in criminal law—that branch of the law which does the courts and the legal profession least credit. The consequences upon society of limiting examination of persons out of court cannot fairly be appraised without recognition of the advantage criminals already enjoy in immunity from compulsory examination in court. Of this latter Mr. Justice Cardozo, for an all but unanimous Court, said: "This too might be lost, and justice still be done. Indeed, today as in the past there are students of our penal system who look upon the immunity as a mischief rather than a benefit, and who would limit its scope, or destroy it altogether. No doubt there would remain the need to give protection against torture, physical or mental." *Palko v. Connecticut*, 302 U. S. 319, 325-26.

This Court never yet has held that the Constitution denies a State the right to use a confession just because the confessor was questioned in custody where it did not also find other circumstances that deprived him of a "free choice to admit, to deny, or to refuse to answer." *Lisenba v. California*, 314 U. S. 219, 341. The Constitution requires that a conviction rest on a fair trial. Forced confessions are ruled out of a fair trial. They are ruled out because they have been wrung from a prisoner by measures which are offensive to concepts of fundamental fairness. Different courts have used different terms to express the test by which to judge the inadmissibility of a confession, such as "forced," "coerced," "involuntary," "extorted," "loss of freedom of will." But always, where we have professed to speak with the voice of the due process clause, the test, in whatever words stated, has been applied to the particular confessor at the time of confession.

It is for this reason that American courts hold almost universally and very properly that a confession obtained during or shortly after the confessor has been subjected to brutality, torture, beating, starvation, or physical pain of any kind is *prima facie* "involuntary." The effect of threats alone may depend more on

individual susceptibility to fear. But men are so constituted that many will risk the postponed consequences of yielding to a demand for a confession in order to be rid of present or imminent physical suffering. Actual or threatened violence have no place in eliciting truth and it is fair to assume that no officer of the law will resort to cruelty if truth is what he is seeking. We need not be too exacting about proof of the effects of such violence on the individual involved, for their effect on the human personality is invariably and seriously demoralizing.

When, however, we consider a confession obtained by questioning, even if persistent and prolonged, we are in a different field. Interrogation *per se* is not, while violence *per se* is, an outlaw. Questioning is an indispensable instrumentality of justice. It may be abused, of course, as cross-examination in court may be abused, but the principles by which we may adjudge when it passes constitutional limits are quite different from those that condemn police brutality, and are far more difficult to apply. And they call for a more responsible and cautious exercise of our office. For we may err on the side of hostility to violence without doing injury to legitimate prosecution of crime; we cannot read an indiscriminating hostility to mere interrogation into the Constitution without unduly fettering the States in protecting society from the criminal.

It probably is the normal instinct to deny and conceal any shameful or guilty act. Even a "voluntary confession" is not likely to be the product of the same motives with which one may volunteer information that does not incriminate or concern him. The term "voluntary" confession does not mean voluntary in the sense of a confession to a priest merely to rid one's soul of a sense of guilt. "Voluntary confessions" in criminal law are the product of calculations of a different order, and usually proceed from a belief that further denial is useless and perhaps prejudicial. To speak of any confessions of crime made after arrest as being "voluntary" or "uncoerced" is somewhat inaccurate, although traditional.

A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser. The Court bases its decision on the premise that custody and examination of a prisoner for thirty-six hours is "inherently coercive." Of course it is. And so is custody and examination

for one hour. Arrest itself is inherently coercive, and so is detention. When not justified, infliction of such indignities upon the person is actionable as a tort. Of course such acts put pressure upon the prisoner to answer questions, to answer them truthfully, and to confess if guilty.

But does the Constitution prohibit use of all confessions made after arrest because questioning, while one is deprived of freedom, is "inherently coercive"? The Court does not quite say so, but it is moving far and fast in that direction. The step it now takes is to hold this confession inadmissible because of the time taken in getting it.

The duration and intensity of an examination or inquisition always have been regarded as one of the relevant and important considerations in estimating its effect on the will of the individual involved. Thirty-six hours is a long stretch of questioning. That the inquiry was prolonged and persistent is a factor that in any calculation of its effect on Ashcraft would count heavily against the confession. But some men would withstand for days pressures that would destroy the will of another in hours. Always heretofore the ultimate question has been whether the confessor was in possession of his own will and self-control at the time of confession. For its bearing on this question the Court always has considered the confessor's strength or weakness, whether he was educated or illiterate, intelligent or moronic, well or ill, Negro or white.

But the Court refuses in this case to be guided by this test. It rejects the finding of the Tennessee courts and says it must make an "independent examination" of the circumstances. Then it says that it will not "resolve any of the disputed questions of fact" relating to the circumstances of the confession. Instead of finding as a fact that Ashcraft's freedom of will was impaired, it substitutes the doctrine that the situation was "inherently coercive." It thus reaches on a *part* of the evidence in the case a conclusion which I shall demonstrate it could not properly reach on *all* the evidence. And it refuses to resolve the conflicts in the other evidence to determine whether it rebuts the presumption thus reached that the confession is a coerced one.

If the constitutional admissibility of a confession is no longer to be measured by the mental state of the individual confessor but by a general doctrine dependent on the clock, it should be capable of statement in definite terms. If thirty-six hours is more

than is permissible, what about 24? or 12? or 6? or 1? All are "inherently coercive." Of course questions of law like this often turn on matters of degree. But are not the states entitled to know, if this Court is able to state, what the considerations are which make any particular degree decisive? How else may state courts apply our tests?

The importance of defining these new constitutional standards of admissibility of confessions is emphasized by the decision to return the companion case of Ware to the Supreme Court of Tennessee for reconsideration "in the light of the ruling as to Ashcraft." Except for Ware's own testimony, all of the evidence is that when he confronted Ashcraft in custody Ware confessed immediately, voluntarily, and almost spontaneously. But he had been arrested, taken from bed into custody, and detained and questioned. Does the doctrine of inherent coerciveness condemn the Ware confession? Should the Tennessee court decide whether Ware, obviously a much weaker character than Ashcraft, was actually coerced into confessing? It already has decided that question and this Court does not hold the fact determined wrongly. Ware's case is properly in this Court. Why should not this Court decide Ware's case on the merits and thus test and expound its novel ruling as applied to a different set of circumstances?

No one can regard the rule of exclusion dependent on the state of the individual's will as an easy one to apply. It leads to controversy, speculation, and variations in application. To eliminate these evils by eliminating all confessions made after interrogation while in custody is a drastic alternative, but it is the logical consequence of today's ruling, as its application to the facts of Ashcraft's case will show.

II.

Apart from Ashcraft's uncorroborated testimony, which the Tennessee courts refused to believe, there is much evidence in this record from persons whom they did believe and were justified in believing. This evidence shows that despite the "inherent coerciveness" of the circumstances of his examination, the confession when made was deliberate, free, and voluntary in the sense in which that term is used in criminal law. This Court could not, in our opinion, hold this confession an involuntary one except by substituting its presumption in place of analysis of the evidence

and refusing to weigh the evidence even in rebuttal of its presumption.

As in most such cases, we start with some admitted facts. In the early morning Mrs. Ashcraft left her home in an automobile to visit relatives. She was found murdered. She had not been robbed nor ravished, although an effort had been made to give the crime an appearance of robbery. The officers knew of no other motive for the killing and naturally turned to her husband for information.

On the afternoon of the crime, Thursday, June 5, 1941, they took Ashcraft to the morgue to identify the body, and to the county jail, where he was kept and interviewed until 2:00 a.m. He makes no complaint of his treatment at this time. In this and several later interviews he made a number of statements with reference to the condition of the car, and as to Mrs. Ashcraft's having taken a certain drug, and as to money which she was accustomed to carry on her person, which further investigation indicated to be untrue. Still Ashcraft was not arrested. He professed to be willing to assist in identifying the killer. At last, on Saturday evening, June 14, an officer brought Ashcraft to the jail for further questioning. He was taken to a room on the fifth floor and questioned intermittently by several officers over a period of about thirty-six hours.

There are two versions as to what happened during this period of questioning. According to the version of the officers, which was accepted by the court, which saw the witnesses, what happened? On Saturday evening Ashcraft was taken to the jail, where he was questioned by Mr. Becker and Mr. Battle. Becker is in the Intelligence Service of the United States Army at the present time and before that was in charge of the Homicide Bureau of the Sheriff's office of Shelby County, Tennessee. Battle has for eight years been an Assistant Attorney General of the County. They began questioning Ashcraft about 7:00 p.m. They recounted various statements of his which had proved untrue. About 11:00 o'clock Ashcraft said he realized the circumstances all pointed to him and that he could not explain the circumstances. They then accused him of the murder, but he denied it. About 3:00 a.m. Becker and Battle retired and left Ashcraft in charge of Ezzell, a special investigator connected with the Attorney General's office. He questioned

Ashcraft and discussed the crime with him until about 7:00 on Sunday morning. Becker and Battle then returned and interviewed him intermittently until about noon, when Ezzell returned and remained until about 5:00. Becker then returned, and about 11:00 o'clock Sunday night Ashcraft expressed a desire to talk with Ezzell. Ezzell was sent for and Ashcraft told him he wanted to tell him the truth. He said, "Mr. Ezzell, a Negro killed my wife." Ezzell asked the Negro's name, and Ashcraft said, "Tom Ware." Up to this time Ware had not been suspected, nor had his name been mentioned. Ashcraft explained that he did not tell the officers before, because "I was scared; the negro said he would burn my house down if I told the law."

Thereupon Becker, Battle, Ezzell, and Mr. Jayroe, connected with the Sheriff's office, took Ashcraft in a car and found Ware. When questioned at the jail, Ware turned to Ashcraft and said in substance that he had told Ashcraft when this thing happened that he did not intend to take the entire blame. The officers thereupon turned their attention to Ware. He promptly admitted the killing and said Ashcraft hired him to do it. Waldauer, the court reporter, was called to take down this confession, and completed his transcript at about 5:40 a.m. He read it to Ware and told him he did not have to sign it unless he so chose. Ware made his mark upon it and swore to it before Waldauer as a Notary Public. A copy was given to Ashcraft, and he then admitted that he had hired Ware to kill his wife. He was given breakfast and then in response to questions made a statement which was taken down by the court reporter, Waldauer. It was transcribed, but Ashcraft declined to sign it, saying that he wanted his lawyer to see it before he signed it. No effort was made to compel him to sign the confession. However, two business men of Memphis, Mr. Castle, vice president of a bank, and Mr. Pidgeon, president of the Coca-Cola Bottling Company, were called in. Both testified that Ashcraft in their presence asserted that the transcript was correct but that he declined to sign it. The officers also called Dr. McQuiston to the jail to make a physical examination of both Ashcraft and Ware. He had practiced medicine in Memphis for twenty-eight years and both Mr. and Mrs. Ashcraft had been his patients for something like five years. In the presence of this friendly doctor Ashcraft might have complained of his treatment and avowed his innocence. The doctor testified, however, that Ash-

craft said he had been treated all right, that he made no complaint about his eyes, and that they were not bloodshot. The doctor made a physical examination, and says Ashcraft appeared normal. He further testified as to Ashcraft, "Well, sir, he said he had not been able to get along with his wife for some time; that her health had been bad; that he had offered her a property settlement and that she might go her way and he his way; and he also stated that he offered this colored man, Ware, a sum of money to make away with his wife."¹ The doctor says that that statement was entirely voluntary. No matter what pressure had been put on Ashcraft before, the courts below could reasonably believe that he made this statement voluntarily to a man of whom he had no fear and who knew his family relations.

Ashcraft's story of torture could only be accepted by disbelieving such credible and unimpeached contradiction. Ashcraft testified that he was refused food, was not allowed to go to the lavatory, and was denied even a drink of water. Other testimony is that on Saturday night he was brought a sandwich and coffee about midnight; that he drank the coffee but refused the sandwich; that on Sunday morning he was given a breakfast and was fed again about noon a plate lunch consisting of meat and vegetables and coffee. Both Waldauer, the Reporter, and Dr. McQuiston testified that they saw breakfast served to Ashcraft the next morning, before the statement taken down by Waldauer. Ashcraft claims he was threatened and that a cigarette was slapped out of his mouth. This is all denied.

This Court rejects the testimony of the officers and disinterested witnesses in this case that the confession was voluntary not because it lacked probative value in itself nor because the witnesses were self-contradictory or were impeached. On the contrary, it is impugned only on grounds such as that such disputes "are an inescapable consequence of secret inquisitorial practices." We infer from this that since a prisoner's unsupported word often conflicts with that of the officers, the officer's testimony for constitutional purposes is always *prima facie* false. We know that police standards often leave much to be desired, but we are not

¹ The officers had been baffled as to any motive for Ashcraft to murder his wife (who was his third, two former ones having been separated from him by divorce). He disclosed in his confession to them that her sickness had resulted in a degree of irritability which had made them incompatible and resulted in his sexual frustration.

ready to believe that the democratic process brings to office men generally less believable than the average of those accused of crime.

Reference also is made to the fact that when petitioner was questioned investigation had failed "to unearth one single tangible clue pointing to his guilt." We cannot see the relevance of such circumstances on the question of the voluntary or involuntary character of his statements to the officers. Is the suggestion that if they had probable clues to his guilt, their questioning of him would have been better justified?

This questioning is characterized as a "secret inquisition," invoking all of the horrendous historical associations of those words. Certainly the inquiry was participated in by a good many persons, and we do not see how it could have been much less "secret" unless the press should have been called in. Of course, any questioning may be characterized as an "inquisition," but the use of such characterizations is no substitute for the detached and judicial consideration that the court below gave to the case.

We conclude that even going behind the state court decisions into the facts, no independent judgment on the whole evidence that Ashcraft's confession was in fact coerced is possible. And against this background of facts the extreme character of the Court's ruling becomes apparent.

I am not sure whether the Court denies the State all right to arrest and question the husband of the slain woman. No investigation worthy of the name could fail to examine him. Of all persons he was most likely to know whether she had enemies or rivals. Would not the State have a constitutional right, whether he was accused or not, to arrest and detain him as a material witness? If it has the right to detain one as a witness, presumably it has the right to examine him.

Could the State not confront Ashcraft with his false statements and ask his explanation? He did not throw himself at any time on his rights, refuse to answer, and demand counsel, even according to his own testimony. The strategy of the officers evidently was to keep him talking, to give him plenty of rope and see if he would not hang himself. He does not claim to have made objection to this. Instead he relied on his wits. The time came when it dawned on him that his own story brought him under suspicion, and that he could not meet it. Must the officers stop at this point because he was coming to appreciate the uselessness of deception?

Then he became desperate and accused the Negro. Certainly from this point the State was justified in holding and questioning him as a witness, for he claimed to know the killer. That accusation backfired and only turned up a witness against him. He had run out of expedients and inventions; he knew he had lost the battle of wits. After all honesty seemed to be the best, even if the last, policy. He confessed in detail.

At what point in all this investigation does the Court hold that the Constitution commands these officers to send Ashcraft on his way and give up the murder as insoluble? If the state is denied the right to apply any pressure to him which is "inherently coercive" it could hardly deprive him of his freedom at all. I, too, dislike to think of any man, under the disadvantages and indignities of detention being questioned about his personal life for thirty-six hours or for one hour. In fact, there is much in our whole system of penology that seems archaic and vindictive and badly managed. Every person in the community, no matter how inconvenient or embarrassing, no matter what retaliation it exposes him to, may be called upon to take the witness stand and tell all he knows about a crime—except the person who knows most about it. Efforts of prosecutors to compensate for this handicap by violent or brutal treatment or threats we condemn as passionately and sincerely as other members of the Court. But we are not ready to say that the pressure to disclose crime, involved in decent detention and lengthy examination, although we admit them to be "inherently coercive," are denied to a State by the Constitution, where they are not proved to have passed the individual's ability to resist and to admit, deny, or refuse to answer.

III.

The Court either gives no weight to the findings of the Tennessee courts or it regards their inquiry as to the effect on the individuals involved as immaterial. We think it was a material inquiry and that respect is due to their conclusion.

The Supreme Court of Tennessee, writing in this case, stated the law of that State by which it reviewed and affirmed the action of the trial court. It said, "When confessions are offered as evidence, their competency becomes a preliminary question to be determined by the court. This imposes upon the presiding judge the duty of deciding the fact whether the party making the con-

fession was influenced by hope or fear. This rule is so well established that if the judge allow the jury to determine the preliminary fact, it is error, for which the judgment will be reversed.

"In the instant case the trial judge heard the witnesses as to their confessions out of the presence of the jury, and he held that under the facts he could not say that the confessions were not voluntarily made and, therefore, permitted them to go to the jury." [Emphasis supplied.]

The rule of law thus laid down complied with the law as this Court had settled it at the time of trial.

The Tennessee Supreme Court made a painstaking examination of the evidence in the light of the claim that the confessions were coerced. It concluded that it was "unable to say that the confessions were not freely and voluntarily made. Both of the plaintiffs in error have had a fair trial and we decline to disturb the conviction."

That court, it is clear, renders no mere lip service to the guaranties of the Constitution. In other cases it has set aside convictions because confessions used at trials were found to have been coerced.² There is not the least indication that the court was passionate or biased or that the result does not represent the honest judgment of a high-minded court, sensitive to these problems.

A trial judge out of hearing of the jury saw and heard Ashcraft and saw and heard those whom Ashcraft accused of coercing him. In determining a matter of this kind no one can deny the great advantage of a court which may see and hear a man who claims that his will succumbed and those who, it is claimed, were so overbearing. The real issue is strength of character, and a few minutes' observation of the parties in the courtroom is more informing than reams of cold record. There is not the slightest indication that the trial judge was prejudiced or indifferent to the prisoner's rights. Ashcraft's counsel moved to exclude his confession "for the reason that the statements contained therein were not freely and voluntarily made, nor were they free from duress and restraint, but were secured by compulsion. . . ." The court said, " . . . the sole proposition, as the Court sees it from this testimony, is that he was confined and questioned for a

² *Deathridge v. State*, 33 Tenn. 75; *Strady v. State*, 45 Tenn. 300; *Self v. State*, 65 Tenn. 244; *Cross v. State*, 142 Tenn. 510; *Rounds v. State*, 171 Tenn. 511.

period of approximately thirty-six hours. I think counsel concedes that is practically the main ground upon which he rests his motion. There was no physical violence offered to the defendant Ashcraft, and none was claimed." He overruled the motion and received the confession. This Court, not one of whose members ever saw Ashcraft or any one of the State's witnesses, overturns the decision by the trial judge.

Moreover, a jury held Ashcraft's statements incredible. After the trial judge, out of their presence, heard the evidence and decided the confession was admissible, the jury heard the evidence to decide whether the confession should be believed. Ashcraft again testified and so did all of the witnesses for the State. Conduct of the hearing both by the judge and the prosecutors was above criticism. The Court observes: "If, therefore, the question of the voluntariness of the two confessions was actually decided at all it was by the jury." Is it suggested that a state consistently with the Constitution may not leave this question to the sole determination of a jury? I had supposed that the constitutional duty of a state when such questions of fact arise is to furnish due process of law for deciding them. Does not jury trial meet this test? Here Tennessee, and I think very commendably, provided the double safeguards of a preliminary trial by the judge and a final determination by the jury.

The Court's opinion makes a critical reference to the charge of the trial judge. However, diligent counsel took no exception to the part of the charge quoted, made no request for further instruction on the subject, and assigned no error to the charge. Even if we think the charge inadequate, does the inadequacy of a charge constitute want of due process? And if so, do we review questions as to the charge although counsel for the petitioner made no objection during the trial when the judge could have corrected the error, but after the trial was over assigned it as one of twelve reasons for demanding a new trial?

No conclusion that this confession was actually coerced can be reached on this record except by reliance upon the utterly uncorroborated statements of defendant Ashcraft. His testimony does not carry even ordinary guaranties of truthfulness, and the courts and jury were not bound to accept it. Perjury is a light offense compared to murder and they may well have believed that Ashcraft was ready to resort to a lesser crime to avoid conviction.

of a greater one. Furthermore, the very grounds on which this Court now upsets his conviction Ashcraft repudiated at the trial. He asserts that he was abused, but he does not testify as this Court holds that it had the effect of forcing an involuntary confession from him. On the contrary, he flatly insists that it had no such effect and that he never did confess at all.

Against Ashcraft's word the state courts and jury accepted the testimony of several apparently disinterested witnesses of high standing in their communities, in addition to that of the accused officers. One of the witnesses to Ashcraft's admission of guilt was his own family physician, two were disinterested business men of substance and standing, another was an experienced court reporter who had long held this position of considerable trust. Another was a member of the bar. Certainly, the state courts were not committing an offense against the Constitution of the United States in refusing to believe that this whole group of apparently reputable citizens entered into a conspiracy to swear a murder onto an innocent man, against whom not one of them is shown to have had a grievance or a grudge.

This is not the case of an ignorant and unrepresented defendant who has been the victim of prejudice. Ashcraft was a white man of good reputation, good position, and substantial property. For a week after this crime was discovered he was not detained, although his stories to the officers did not hang together, but was at large, free to consult his friends and counsel. There was no indecent haste, but on the contrary evident deliberation, in suspecting and accusing him. He was not sentenced to death, but for a term that probably means life. He was defended by resourceful and diligent counsel.

The use of the due process clause to disable the states in protection of society from crime is quite as dangerous and delicate a use of federal judicial power as to use it to disable them from social or economic experimentation. The warning words of Mr. Justice Holmes in his dissenting opinion in *Baldwin v. Missouri*, 281 U. S. 586, 595, seem to us appropriate for rereading now.

Mr. Justice ROBERTS and Mr. Justice FRANKFURTER join in this opinion.